

Iahdgat1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 686 (LAK)

5 JAMES GATTO, a/k/a "Jim,"
6 MERL CODE,
7 CHRISTIAN DAWKINS,

8 Defendants.

-----x

9 October 17, 2018
10 10:09 a.m.

11 Before:

HON. LEWIS A. KAPLAN,

12 District Judge
13 and a Jury

14 APPEARANCES

15 ROBERT S. KHUZAMI
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: EDWARD B. DISKANT
19 NOAH D. SOLOWIEJCZYK
20 ALINE R. FLODR
21 ELI J. MARK
22 Assistant United States Attorneys

23 WILLKIE FARR & GALLAGHER LLP
24 Attorneys for Defendant Gatto
25 BY: MICHAEL S. SCHACHTER
CASEY E. DONNELLY

Iahdgat1

APPEARANCES (Cont'd)

NEXSEN PRUET LLC

Attorneys for Defendant Code

BY: MARK C. MOORE

ANDREW A. MATHIAS

-and-

MERL F. CODE

HANEY LAW GROUP PLLC

Attorneys for Defendant Dawkins

BY: STEVEN A. HANEY

Also present: SONYA JACOBS, Paralegal
SYLVIA LEE, Paralegal
ANTHONY CASOLA, FBI

Iahdgat1

1 (Trial resumed; jury not present)

2 (Mr. Mark and Mr. Haney not present)

3 THE COURT: Good morning, everybody.

4 ALL COUNSEL: Good morning, your Honor.

5 THE COURT: Be seated.

6 MR. MOORE: Your Honor, Mr. Mathias, who was entered
7 in this case but has not been here for most of the trial is
8 sitting with us at counsel table this morning, if that is
9 acceptable to the Court.

10 THE COURT: All right. I would be happy to have him.

11 MR. MOORE: Thank you, your Honor.

12 THE COURT: OK. So you all have the draft charge that
13 was distributed earlier today. We will mark a copy Court
14 Exhibit E.

15 Two preliminary questions before we get down into the
16 details. Is anybody contesting venue, or can we shorten this
17 by dropping the venue charge out?

18 MR. MOORE: May I have one moment? I think there are
19 some venue issues but I think that -- we are not contesting it.

20 THE COURT: OK. Does somebody have authority to
21 commit Mr. Haney on this?

22 MR. MOORE: I have Mr. Haney's proxy.

23 THE COURT: So we'll drop the venue charge.

24 I wanted to raise also what defendants' position is
25 with respect to the conscious avoidance charge in the sense

Iahdgat1

1 that I've put it in here based on my assumption of what the
2 defense might be contesting, or maintaining, but I don't know
3 what your positions are. So, what about it?

4 MR. SCHACHTER: Your Honor, we do object to a
5 conscious avoidance instruction because there has been no
6 factual predicate for that charge. The government has not
7 presented any evidence of any defendant willfully blinding
8 themselves to the existence of false certifications, and absent
9 that factual predicate --

10 THE COURT: That wasn't actually my question.
11 Mr. Schachter.

12 MR. SCHACHTER: I apologize, your Honor. Let me try
13 to answer it more directly.

14 I think that we very well -- I think we will argue
15 that there is no evidence that the defendants intended any of
16 these false certifications to be made or that they knew any of
17 them existed --

18 THE COURT: OK.

19 MR. SCHACHTER: -- for Mr. Gatto.

20 THE COURT: And what about for the other two
21 defendants?

22 MR. MOORE: I agree with Mr. Schachter, your Honor.

23 THE COURT: OK. Fine. Well, then we'll come to the
24 question of factual predicate later, which we wouldn't have
25 reached but for the statement that was made, and I appreciate

Iahdgat1

1 the statement.

2 OK. We'll begin at page 3. Any objections from the
3 top of page 3 through page 7, line 17?

4 MR. DISKANT: No, your Honor.

5 MR. SCHACHTER: No, your Honor.

6 THE COURT: Mr. Moore?

7 MR. MOORE: No, your Honor.

8 THE COURT: Page 7, line 18, through page 8, line 14.
9 Mr. Schachter?

10 MR. SCHACHTER: Yes, your Honor. We do object to the
11 language on page 8 at line 8, at the end of that line, through
12 line 14.

13 THE COURT: On what ground?

14 MR. SCHACHTER: Several, your Honor. First, we do not
15 think it is appropriate to refer to anything that was said in
16 opening statement as a concession, not -- and I'm not
17 necessarily saying that we are contesting the point that your
18 Honor intends to instruct the jury about, but we don't think it
19 belongs in the Court's instructions. In fact, it is
20 inconsistent with what the Court will instruct -- I think it is
21 in the instruction -- that what the lawyers say is not
22 evidence, and, therefore, I think it is inappropriate to --

23 THE COURT: Yes, but a concession by a lawyer in
24 opening statement is binding on the client.

25 MR. SCHACHTER: That may be, your Honor. We still

Iahdgat1

1 don't think it is appropriate for the Court's charge. And,
2 also, we think that the characterization of what the case is
3 essentially about we think is problematic, because it allows --
4 it invites the jury to shortcut the issues. We don't actually
5 think -- I mean, given that there are specific elements of wire
6 fraud, we don't agree that this is what the case is essentially
7 about. And given -- and I think it has the potential to
8 distract the jury from the Court's instructions on the elements
9 of wire fraud and the need to find each of those beyond a
10 reasonable doubt. So it is our request, your Honor, that there
11 be no short gist of the indictment. They should focus on each
12 of the elements.

13 THE COURT: Mr. Diskant.

14 MR. SCHACHTER: And I guess -- may I add to that, your
15 Honor? I mean, it also -- I don't know that it is about
16 whether the universities were fraudulently misled. It is about
17 whether there was a scheme to make false representations in
18 order to deprive the universities of money or property, and so
19 we don't think that the characterization is accurate. I fear
20 it is dangerous because it distracts from the elements.

21 MR. DISKANT: Your Honor, we think that is entirely
22 accurate and helpful. And I would note that it is followed by
23 the Court immediately saying, "I will give you comprehensive
24 instructions on this point in a moment." So that to the extent
25 this is in any way a shorthand, the Court is making clear more

Iahdgat1

1 is to come.

2 THE COURT: I'll make two changes. And, of course,
3 the bolded material won't be what goes in the jury room. I'll
4 change the sentence starting at line 8 to read: "There is no
5 dispute that NCAA rules were violated." And I'll add at the
6 end of line 14, "which you will follow in all respects."

7 Is that satisfactory to everybody?

8 MR. SCHACHTER: Just for the record, we do wish to
9 object to even that language. We believe it presents a
10 potential variance.

11 THE COURT: Overruled.

12 Page 8, line 15 through page 9, line 4.

13 MR. SCHACHTER: Yes, your Honor. And with the Court's
14 permission, with respect to our conference this morning, I hope
15 it will be acceptable to the Court if Ms. Donnelly also speaks.
16 We just didn't have enough time to coordinate everything that
17 we have to say.

18 THE COURT: As long as you are not both dealing with
19 the same issue.

20 MR. SCHACHTER: Yes, your Honor.

21 So, your Honor, we believe that this instruction is --
22 we do object to this instruction. This focuses the jury
23 entirely on the concept of actual agency and not apparent
24 agency, which if it had been apparent agency is really the
25 entire issue in a wire fraud case. It is all about what the

Iahdgat1

1 defendants believed about whether or not the corporate agents
2 that they were interacting with were acting on behalf of the
3 corporation and in the interest of the corporate objectives of
4 the entity.

5 Speaking of actual agency we think is inaccurate in
6 the context of wire fraud.

7 THE COURT: And can you point me to where the word
8 "actual" appears?

9 MR. SCHACHTER: It is just that the instruction here,
10 your Honor, is an actual agency instruction. You say -- the
11 Court is instructing them that the intentions, statements and
12 actions are considered to be those of the university --

13 THE COURT: Mr. Schachter, I remind you of the
14 conference we had yesterday afternoon, and then ask you again
15 to point out to me, if it is there, where the word "actual"
16 appears in conjunction with the word "authority."

17 MR. SCHACHTER: I'm sorry, your Honor. The word
18 "actual" does not appear.

19 THE COURT: Thank you. The objection is overruled.
20 The question is what the charge conveys as a whole. This
21 charge is long enough without repeating in extenso absolutely
22 everything every time a concept is introduced. The question of
23 authority along the lines of what you say needs to be there is
24 there elsewhere, and it clearly modifies this.

25 OK.

Iahdgat1

1 MS. DONNELLY: Your Honor --

2 THE COURT: Just a minute.

3 Anything else on this section?

4 MS. DONNELLY: Yes, your Honor.

5 We would ask, if your Honor is going to give this
6 particular instruction here, that your Honor give the
7 instruction about agency that Judge Preska gave in United
8 States v. Davis. I have it here. We think this more fairly --
9 excuse me, more accurately reflects the statement of agency, so
10 that would be our request.

11 THE COURT: Well, I'm glad you have it there. I don't
12 have it here.

13 MS. DONNELLY: Could I hand it up?

14 THE COURT: That's a thought.

15 (Pause)

16 So this appears at pages 1148 and 1149 of the trial
17 transcript in United States v. Davis, 13 Criminal 923.

18 And what you've now done is you've objected to this
19 part of my charge on the ground that it relates to "actual"
20 rather than "apparent" authority, notwithstanding the lack of
21 the use of the word "actual." And now Ms. Donnelly has asked
22 me to give an actual authority charge, to which Mr. Schachter
23 just objected.

24 Now, would you get it together, folks?

25 MR. SCHACHTER: Your Honor, I apologize. The

Iahdgat1

1 intention was that if your Honor was inclined to give this
2 instruction and overrule our objection on the apparent agency
3 concept, that we would then go into proposing this language.

4 THE COURT: So your position is that if I'm going to
5 give an actual authority charge, which I don't propose to do,
6 but you characterize it as such, you object to an actual
7 authority charge, but if it's to be an actual authority charge,
8 you want me to charge actual authority, right?

9 MR. SCHACHTER: Correct.

10 THE COURT: Shall I tell the jury they won't be back
11 until Thursday?

12 MR. SCHACHTER: I apologize.

13 THE COURT: Friday?

14 I'm not going to give this. I give a totally
15 appropriate, I believe, though I'll certainly hear you on it
16 later, charge about authority insofar as it relates to this
17 case.

18 Anything else -- and, by the way, we're not going to
19 do this again. This part of the charge was yours,
20 Mr. Schachter. It's not a tag team match.

21 Anything else up through page 9, line 4?

22 OK.

23 Page 9, line 9 through page 10, line 14?

24 MR. SCHACHTER: Yes, your Honor. Very briefly.

25 On line 16, we ask that the Court characterize the

Iahdgat1

1 charge as one of making or causing to be made material false
2 representations, as opposed to focusing on the payments,
3 because the payments are not the gravamen of the charge, it is
4 the false representations.

5 And the other objection is on line 17, it says, "in
6 connection with obtaining the commitment," and the charge is
7 actually "in connection with obtaining a scholarship." The
8 commitment is neither money nor property, but the scholarship
9 is the money or property that is alleged.

10 THE COURT: As to the second point, I think he is
11 probably right, right?

12 MR. DISKANT: That is fine, your Honor, just say
13 "obtaining a scholarship for."

14 THE COURT: Go back to the first point, please.

15 MR. SCHACHTER: Yes, your Honor. Very briefly.

16 The description of the charge is that they participate
17 in a scheme to defraud by causing -- by making or causing to be
18 made payments, when in effect given the nature of the charge it
19 is actually by making or causing to be made false -- material
20 false representations, not the payments.

21 THE COURT: Mr. Diskant?

22 MR. DISKANT: I don't have a conceptual problem with
23 that. I would like to take a look at the language but I think
24 that's fine.

25 THE COURT: I don't have a problem with

Iahdgat1

1 Mr. Schachter's suggestion, "material false representations."

2 MR. DISKANT: Then I think, just so I understand what
3 will then follow is, "in connection with the university's
4 decision to award a scholarship."

5 THE COURT: "Using interstate wires in connection
6 with."

7 MR. DISKANT: Yes.

8 THE COURT: Yes.

9 MR. DISKANT: But it should then be the university's."

10 THE COURT: "In connection with obtaining a
11 scholarship from the University of Louisville for Brian Bowen
12 Junior to play basketball for that school."

13 Satisfactory all around?

14 MR. SCHACHTER: Yes, your Honor. And then the same
15 change would be with respect to Count Three.

16 THE COURT: OK.

17 OK. Page 10, line 15 through page 13, line 2?

18 MS. DONNELLY: Yes, your Honor. On page 11, line 2,
19 we would just ask that the line read "A person seeks to gain
20 some unfair advantage over the victim," as opposed to "another
21 person."

22 THE COURT: Any problem with that, Mr. Diskant?

23 MR. DISKANT: No, your Honor.

24 THE COURT: All right.

25 MS. DONNELLY: And then on line 3, it says, "false

Iahdgat1

1 suggestion or false pretenses." It is not my understanding
2 that false suggestion is -- we would agree if it just said "by
3 intentional misrepresentation or false pretenses" and the words
4 "false suggestion" be struck.

5 THE COURT: Any problem, Mr. Diskant?

6 MR. DISKANT: I think false suggestion is appropriate
7 hear, particularly given some of Mr. Schachter's hypertechnical
8 arguments about the statement concerning eligibility.

9 THE COURT: Why not, Ms. Donnelly?

10 MS. DONNELLY: I don't know of any Second Circuit
11 cases that say a suggestion constitutes a false representation.
12 I agree, intentional misrepresentations, absolutely. False
13 pretenses, that's in the language of the statute. I don't know
14 of any cases that talk about false suggestion.

15 THE COURT: All right. I will sustain that objection.
16 "False suggestion" will come out. It is not in the statute,
17 Mr. Diskant.

18 Anything else on this section from the defense?

19 MS. DONNELLY: Yes. Line 9, on page 11. Currently it
20 says, "A statement may also be fraudulent if it is ambiguous or
21 incomplete." We have two objections. First, this is a
22 half-truth instruction, and we don't believe that a half-truth
23 theory of wire fraud was laid out in the indictment, so we
24 object on that basis. And then assuming that your Honor --

25 THE COURT: That one is overruled.

Iahdgat1

1 MS. DONNELLY: Understood.

2 So, now that that will be in the charge, we would ask
3 that the word "purposefully ambiguous or incomplete" be added,
4 because statements may very well be ambiguous or incomplete to
5 the listener but they were not intended to be so, and so that
6 to us is an important distinction.

7 THE COURT: Well, I take your point to a point, and I
8 think the better way of handling it is to restructure the
9 paragraph and to change one word. In the third sentence, I
10 would change the word "fraudulent" to "false" and make it the
11 second sentence, and then alter the following sentence so that
12 it reads: "A representation or statement is fraudulent if it
13 was made falsely and with the intent to deceive."

14 I think that covers your point.

15 MS. DONNELLY: That is correct. That would be
16 acceptable.

17 THE COURT: OK. Fine.

18 Anything else from the defense on this section?

19 MS. DONNELLY: Would your Honor remind me of where you
20 said we should stop? I just can't --

21 THE COURT: 13, line 2.

22 MS. DONNELLY: 13, line 2. No other objections from
23 the defense.

24 THE COURT: Thank you.

25 The government?

Iahdgat1

1 MR. DISKANT: Yes, your Honor.

2 At page 12, line 6 and 7, we would request the Court
3 consider changing the language "willfully caused the
4 student-athletes to make false certifications" to "willfully
5 caused false certifications to be made by student-athletes,"
6 which is what this statute provides for, that is, willfully
7 causing an act to be on done. Our concern is the way the facts
8 in this case have come in, we don't believe there is a
9 requirement that any defendant specifically told the
10 student-athletes to make a false statement.

11 THE COURT: What is the defense's view on making that
12 change?

13 MR. SCHACHTER: Your Honor, may we have a moment? I
14 think we would need to look at Section 2.

15 (Pause)

16 MS. DONNELLY: We agree with Mr. Diskant. That's the
17 language of the statute. So, we are OK with that.

18 THE COURT: OK. So I will make line 7 read "making of
19 a false certification by a student-athlete," and then go on as
20 it presently reads. OK.

21 Anything else up to page 13, line 2?

22 MR. DISKANT: No, your Honor.

23 THE COURT: All right. 13, line 3 through 15, line
24 10. Defense?

25 MS. DONNELLY: Yes, a few things.

Iahdgat1

1 So, just for the record, because I don't want to
2 belabor the point, we object to the definition of the way the
3 Court is describing "authorized agents." We've already
4 discussed this. Your Honor has already ruled. I don't need to
5 belabor it. I just would like to make that objection for the
6 record.

7 Assuming I have now done that --

8 THE COURT: You are referring to what lines?

9 MS. DONNELLY: Oh, I'm sorry. We are referring to
10 lines, on page 13, 11 through 13.

11 THE COURT: All right. Give me a minute to read it
12 over and make sure I'm convinced it is the same.

13 (Pause)

14 No, I am going to stick to the ruling. I think it is
15 appropriate. I understand the point that is being made here.
16 And "apparent authority" is what controls the good faith. And
17 here, actual authority is relevant, which is different, and
18 that's the basis for my ruling.

19 OK. Anything else?

20 MS. DONNELLY: Yes, your Honor. So I -- and I don't
21 want to belabor the point, but if your Honor agrees that actual
22 authority is relevant, we would renew our -- oh, forget that.

23 We have one additional sentence that we would like to
24 be added to the paragraph that goes from page 13, line 8 to
25 line 13. There is a description, "interests of the

Iahdgat1

1 university." We would just like your Honor to tell the jury
2 that it is a jury question of what those interests are, and
3 that's a factual question that the jury can decide.

4 THE COURT: Mr. Diskant?

5 MR. DISKANT: I'm sorry.

6 THE COURT: Page 13, line 13. She wants me to insert,
7 in substance, the question of whether interests are fully
8 aligned is a question for determination by the jury.

9 MR. DISKANT: I don't think we have -- just to be
10 clear, the request is that the interests of the university is a
11 jury fact or whether or not --

12 THE COURT: Whether the putative agent's interests are
13 aligned with those of the university is a jury fact. That's
14 what she wants me to put in here.

15 MR. DISKANT: I think that's fine. I'm not sure we
16 need to say it here. I think this has more to do with the
17 apparent authority, but I don't have an objection to it.

18 THE COURT: All right. Give me your language,
19 Ms. Donnelly.

20 MS. DONNELLY: Well, what I had proposed was that
21 after the phrase "Interests of the university" on line 13, "It
22 is up to you, the jury, to decide what the defendants
23 understood the interests of the universities to be."

24 MR. DISKANT: I object.

25 THE COURT: That's different.

Iahdgat1

1 MS. DONNELLY: Understanding, though, your prior
2 rulings, we don't have to put in what the defendants believe.
3 We can just say it is up to the jury to decide what the
4 interests of the universities are and whether they are --
5 whether the agent's interests are fully aligned with those.

6 MR. DISKANT: Your Honor, now this is starting to get
7 more confusing. I think this is better reserved for the
8 portion of the charge where the Court explores this at some
9 length on the issue of apparent authority.

10 THE COURT: I agree with that. I'm not going to do
11 it.

12 OK. Anything else up to page 15, line 10?

13 MS. DONNELLY: Yes, your Honor.

14 On page 13, at line 21, your Honor has, "officers or
15 employees of the University of Kansas might have considered
16 important in deciding whether to provide a scholarship to Billy
17 Preston." I think the parties are in agreement that the
18 standard is really whether the representation was capable of
19 influencing the decision of the appropriately authorized and
20 unconflicted officers of the University of Kansas in deciding
21 whether to provide a scholarship.

22 MR. DISKANT: That's fine.

23 THE COURT: So the words "might have considered
24 important" on line 21 are stricken, and at the beginning of
25 line 20, the words "was capable of influencing" have been

Iahdgat1

1 inserted. Satisfactory?

2 MS. DONNELLY: Yes, your Honor.

3 THE COURT: Mr. Diskant?

4 MR. DISKANT: Yes, your Honor.

5 THE COURT: Anything else on this section from the
6 defense?

7 MS. DONNELLY: Just one. On page 14, at line 22,
8 currently it says, "must prove beyond a reasonable doubt that
9 the alleged scheme contemplated depriving the victim," and we
10 would just, because this is the first element of the statute,
11 not the second, we would like it to say it must prove beyond a
12 reasonable doubt that the object of the alleged scheme was to
13 deprive the victim, because this is about the object of the
14 scheme, not intent.

15 THE COURT: Mr. Diskant? I think this is a semantic
16 point.

17 MR. DISKANT: I do, too. I don't think it is a big
18 deal. That is fine.

19 THE COURT: I'm not going to change that. It is
20 semantics.

21 Anything else from the defense through page 15, line
22 10?

23 MS. DONNELLY: On page 15, at line 6 through 8 -- at
24 line 7, it says, "if, and only if, the scheme" was intended to
25 cause, or did cause -- I think we would like it to say "was

Iahdgat1

1 intended to cause or did cause tangible economic harm" as
2 opposed "to could have caused."

3 THE COURT: We have been over this a hundred times,
4 right? Finazzo says exactly the opposite.

5 MS. DONNELLY: I just wanted to preserve that for the
6 record.

7 THE COURT: Fair enough. I just wanted to make sure
8 we were talking about the same point. You know, I know you
9 have to make a record.

10 Anything else through here from the defense?

11 MS. DONNELLY: No, your Honor.

12 THE COURT: Mr. Diskant, the government?

13 MR. DISKANT: No, your Honor.

14 THE COURT: OK. Page 15, line 22 through page 21,
15 line 3. Defense?

16 MS. DONNELLY: Yes, your Honor.

17 THE COURT: Go ahead.

18 MS. DONNELLY: Purely for the record -- I understand
19 your Honor's position -- we object to page 16, lines 9 through
20 10. We think that the wire fraud statute requires the
21 defendant to act with the intent of obtaining something from
22 the university. Purely for the record.

23 THE COURT: Overruled. I've already ruled on that.

24 MS. DONNELLY: OK. Again, just for the record, on
25 line 11, it says, "control money or property" was intended to

Iahdgat1

1 or did result. Your Honor has already ruled. Just for the
2 record.

3 THE COURT: Overruled.

4 MS. DONNELLY: OK. And then on lines 14 through 16,
5 your Honor has what I'm going to refer to as a dual intent
6 instruction.

7 THE COURT: As a what?

8 MS. DONNELLY: As a dual intent instruction. I could
9 use a different phase, if you want.

10 THE COURT: No. No. That's what I call it. I just
11 didn't hear you.

12 MS. DONNELLY: OK. So the two cases that your Honor
13 cites, which are the two that the government cited when it
14 asked for this instruction, are Skelos and Coyne, and both of
15 those are public corruption cases. They are not wire fraud or
16 mail fraud. I have scoured Second Circuit precedent to find a
17 dual instruction -- a dual intent instruction in the context of
18 wire fraud and have failed to find anything. And so it is our
19 contention that it's not appropriate to give a dual
20 instruction -- a dual intent instruction in a wire fraud case,
21 and we object on those grounds.

22 THE COURT: There is a first time for everything.
23 Overruled.

24 Anything else, Ms. Donnelly, on this section?

25 MS. DONNELLY: Yes, your Honor. Again, purely for the

Iahdgat1

1 record, because I realize your Honor has already ruled, line
2 18 -- excuse me, page 18, at line 2. We would ask that your
3 Honor add, "or did not intend to expose them to the risk of
4 tangible economic harm." I understand that that's been
5 overruled.

6 THE COURT: Just let me focus for a minute.

7 MS. DONNELLY: I'm sorry.

8 (Pause)

9 THE COURT: What is your comment, Mr. Diskant?

10 MR. DISKANT: So we actually have a comment on this
11 section as well, which could potentially --

12 THE COURT: We'll come back to that, but I want to
13 hear what you have to say to this point.

14 MR. DISKANT: So, I would object to the way she is
15 phrasing it. The proposal I was going to make, that I think
16 may be responsive to her concern, is we would propose changing
17 the lines that -- page 17, line 21 through 18/2 to "The
18 defendants held an honest belief that the universities were not
19 being deprived of the ability to make an informed economic
20 decision in such a way as to expose them to the risk of
21 tangible economic harm," which I may be wrong but I think would
22 accomplish Ms. Donnelly's goal as well, because it focuses on
23 the defendants' intention to deprive them of this information.

24 THE COURT: OK. How does that sit with you,
25 Ms. Donnelly?

Iahdgat1

1 MS. DONNELLY: I do better when I can read it as
2 opposed to listening. I just want to make sure I'm getting it.

3 (Pause)

4 I think that would be fine.

5 THE COURT: OK. Look at the progress we have made in
6 12 days. "Were not being deprived of the right to" -- now give
7 me the language, please, Mr. Diskant.

8 MR. DISKANT: Actually, instead of "the right to," I
9 would say "of the ability to make an informed economic
10 decision," which is just the Court's language from page 15, "in
11 such a way as to expose them."

12 THE COURT: OK. Imagine that. Peace breaking out.

13 OK. Anything else from the defense through page 21,
14 line 3?

15 MS. DONNELLY: Yes. On page 18, line 16 through 22, I
16 believe at this point we are talking about intent, and so the
17 question here is an apparent authority instruction.

18 THE COURT: Clearly.

19 MS. DONNELLY: And it is our belief that at line 20,
20 it should say, as opposed to -- it says, "benefit of the victim
21 university and not to serve his or her own interests." It
22 should say, "not to solely serve his or her own interests in a
23 manner that was not," and then we would object to the word
24 "fully" aligned -- I'll stop there because I have a couple more
25 but maybe you want to work on those two first.

Iahdgat1

1 THE COURT: Mr. Diskant.

2 MR. DISKANT: So, your Honor, we addressed this in our
3 objections to their requests. We think they are misstating
4 D'Amato, which says just the opposite, which is that in order
5 to make this out, they have to prove that the agent was acting
6 exclusively in the interest of the corporation and not at all
7 in his own personal interest.

8 THE COURT: Well, they don't have to prove anything.
9 That is the first point.

10 MR. DISKANT: Fair enough. I apologize. The standard
11 is really what I should have said.

12 THE COURT: But isn't that just what she asked me to
13 do?

14 MR. DISKANT: No, your Honor. Because what she is
15 asking you to do is, if I'm understanding it correctly, is to
16 suggest that if an agent is in part acting in the interests of
17 the school and in part acting in his own interests, then that
18 is sufficient. And that is not what D'Amato says. What
19 D'Amato says is that the agent has to be acting exclusively in
20 the interests of the employer.

21 THE COURT: Yes. But, look, I spent a lot of time
22 thinking about this, and I find it pretty subtle and I've tried
23 to come to the right answer. So, let's just talk about it for
24 a minute.

25 Let's take the case, hypothetical, I suppose, but

Iahdgat1

1 let's take the case where the defendant is acting at the
2 request of a coach. The coach appeared to be authorized to
3 make the request, and the agent knew, or believed -- excuse me,
4 the defendant knew, or believed, that the coach had a
5 compensation deal that was in substantial respects contingent
6 on performance -- getting into the Final Four, whatever.

7 Now, if the jury were to find that the university had
8 also interest in getting to the Final Four, that shouldn't
9 necessarily be the end of the discussion. There is, first of
10 all, the question of the performance bonus, where the argument
11 could be made both ways, that the coach's interest in the
12 performance bonus is or is not fully aligned with those of the
13 university. Paying the performance bonus is economically
14 disadvantageous in the short-term to the university but
15 advantageous to the coach. One could argue it the other way by
16 saying, well, the university has an interest in attracting the
17 best coaching talent they can, and if they reasonably made a
18 business decision that it was in their interest to pay the
19 performance bonus, then the coach's receipt of the performance
20 bonus, or his interest in it, would be fully aligned with those
21 of the university.

22 On the other hand, the coach might have other
23 interests that are involved that are not coextensive with the
24 university, such as, hypothetically, getting an open coaching
25 position in the NBA, which he may perceive, depends on how he

Iahdgat1

1 does with the basketball team in the college. And that's only
2 one example. You could hypothesize a million examples.

3 That's why I felt that the ultimate jury question is
4 complete alignment, as opposed to the language that
5 Ms. Donnelly suggested, and I realize here we are on
6 interesting ground.

7 MS. DONNELLY: May I respond?

8 THE COURT: Yes. Sure.

9 MS. DONNELLY: So what your Honor just said is very
10 consistent with our concerns. And I'm wondering if perhaps a
11 sentence that made clear that the fact that a person is
12 receiving compensation for good performance does not mean that
13 those interests are not aligned -- that that doesn't mean that
14 that performance is not aligned with the interests of the
15 university. And I might want to think and talk with
16 Mr. Schachter about exactly what we would propose.

17 But our concern is, of course, that, you know, Rick
18 Pitino is going to get a giant bonus. It is our view that the
19 reason he's getting a bonus is because the university agreed,
20 hey, we want to get to the Final Four, that's why we're going
21 to pay him to do it. And so I'm worried that the jury is going
22 to say, well, Pitino is going to put money in his pocket and
23 that's not what the compliance folks wanted, and it is a very
24 fine distinction, as your Honor knows.

25 THE COURT: Well, of course it is. And I think my

Iahdgat1

1 bottom line -- I mean, I totally understand the concern. And
2 the instruction that you're asking for ignores the fact that
3 there might be circumstances in which Pitino -- the poor man,
4 he's become a celebrity in ways he never imagined or certainly
5 can't like. Coach X. Coach X's interest in a performance
6 bonus may not be fully aligned with the university because
7 Coach X might want that performance bonus and might want to get
8 into the Final Four and do things that are not what the
9 university, if fully informed, would want done. And on those
10 facts, your statement of it doesn't cover the point. It's
11 wrong, actually, in my view. I mean, I understand, total good
12 faith argument, absolutely. Good argument. I would be doing
13 my best with it if I were representing your client, but I don't
14 think it is right.

15 MS. DONNELLY: Just for the record, would your Honor
16 consider parroting some of the language that is used in D'Amato
17 so that subpoint 3 here said the agent appeared to be
18 unconflicted and was acting in good faith for the benefit of
19 the victim university and not out of a desire for
20 self-enrichment, period?

21 THE COURT: It is too narrow.

22 MS. DONNELLY: OK. Well, then, let me try one more
23 thing. On line 21, it says, "that was not aligned with the
24 interests of the university." Would your Honor consider adding
25 "was not aligned with what defendants believed were the

Iahdgat1

1 interests of the university?" My fear is that the
2 defendants -- of course you are right, you might want that NBA
3 job, but I don't know that Mr. Gatto would know that you would
4 want that NBA job. So I am hoping that we can come to an
5 instruction that makes clear that it has to be whether the
6 defendants think that the person is acting in the interests of
7 what the defendant understands the university --

8 THE COURT: I think it is covered. It is just a
9 restatement of what I've got here.

10 OK. Moving on. Anything else from the defense to
11 page 21, line 3?

12 MS. DONNELLY: Yes. On page 19.

13 THE COURT: Yep.

14 MS. DONNELLY: At line 14, we would ask that your
15 Honor strike "should have known." This is not a civil case,
16 right? This is a criminal case. And so we think it is
17 important that the word "knew" be in there; just "knew," not
18 "should have known."

19 THE COURT: Mr. Diskant.

20 MR. DISKANT: I believe "should have known" is
21 directly from D'Amato, your Honor.

22 THE COURT: I think it is, too.

23 MS. DONNELLY: In that one respect, I disagree with
24 D'Amato.

25 THE COURT: There you go. I may or may not but I have

Iahdgat1

1 to follow it.

2 MR. MOORE: Could we move to the Fifth Circuit, your
3 Honor? I thought we were in the Seventh.

4 THE COURT: Maybe it is the right time of the year.

5 MR. MOORE: I meant D'Amato. Could we move D'Amato to
6 the Fifth Circuit?

7 THE COURT: You'll have to ask him.

8 OK. Going once, page 21, line 3, defense?

9 MS. DONNELLY: Just for I think the purposes of a
10 record, because I think we've already covered this now, on
11 line -- page 20, lines 5 through 8, you know, the issue of
12 "entirely aligned with the interests of the university," that I
13 just renew my objection, understanding that your Honor has
14 already ruled on it.

15 THE COURT: Overruled.

16 MS. DONNELLY: OK.

17 MR. SCHACHTER: May we have just a moment?

18 (Pause)

19 MS. DONNELLY: Mr. Schachter reminds me of a question
20 that I don't -- could I ask your Honor to explain a point of
21 law to me that I may misunderstand? That might solve some of
22 them.

23 THE COURT: Should I start the billing meter?

24 MS. DONNELLY: Right. The issue that we're having and
25 that I said not very eloquently is that it seems to us that

Iahdgat1

1 every employee who gets paid has a self-interest in their
2 actions, and so this idea that you have to be fully aligned
3 with the university, that somehow suggests that employees must
4 be selfless, that they must not think of themselves. But, you
5 know, when Mr. Schachter has me working until 3 o'clock in the
6 morning, I'm not doing it for Mr. Schachter, I'm doing it
7 because I want to buy a nice outfit, and so I am struggling
8 with the "fully aligned" portion. And I guess my question is
9 are we misunderstanding what your Honor was intending to say
10 there, was intending to convey?

11 THE COURT: I did the best I could here, and I think I
12 previously indicated that there are many circumstances in which
13 the employee's interest in compensation is fully aligned, and
14 there are some when it is not.

15 MS. DONNELLY: Would your Honor be willing to say that
16 exact sentence to the jury? There are many circumstances in
17 which the employee's interest in compensation is fully aligned
18 and there are some when it is not? That would go a long way, I
19 think, to addressing our concerns, maybe even all the way.

20 THE COURT: Yeah, but I wouldn't even entertain
21 indicating which is more often the case than the other. That's
22 a first proposition.

23 MS. DONNELLY: Understood.

24 THE COURT: You know.

25 Mr. Diskant.

Iahdgat1

1 MR. DISKANT: I think the problem with this entire
2 premise is that D'Amato is -- we are talking about a very
3 narrow set of circumstances. We're not talking about what an
4 employee does day in and day out. We're talking about a
5 circumstance in which the defendant contends an employee is
6 asking the defendant to lie to the employer. That is why the
7 carve out in D'Amato is so narrow. Right?

8 So, yes, there are lots of circumstances in which an
9 employee's compensation, you know, and the employer's interests
10 may align or may not align. Those largely have nothing to do
11 with this case. The reason the exception is so narrow is
12 because the nature of the conduct is so extraordinary, that is,
13 a defendant claiming an employee has instructed me to lie to
14 his employer. And that is why it is so essential -- and that's
15 why D'Amato speaks of it being essential, that the employee be
16 acting unconflicted and in good faith. We don't think saying
17 anything more about compensation is necessary or appropriate.

18 THE COURT: That's my bottom line, I think. I'm
19 reminded of having represented many years ago the head of M&A
20 for a big brokerage firm, and the charge against him was that
21 he manipulated the closing price on the New York Stock Exchange
22 of the stocks in which the brokerage firm held the ten largest
23 positions for its own account to build up the bonus pool for
24 himself and his buddies. Now, there's a case where he had an
25 interest in his compensation, and it sure wasn't aligned with

Iahdgat1

1 the interests of his employer. So I just don't want to go any
2 farther into this. This is a matter for argument, I think.

3 OK. 21, line 3, going once? Going twice --

4 MS. DONNELLY: Yes. One more. Sorry. And we put
5 this in our jury requests and our objections to the government,
6 so I assume your Honor has already rejected our suggestion.
7 But on page 20, at line 18 through 19, your Honor has a line,
8 "As such, when the necessary result of a scheme is to injure
9 others, fraudulent intent may be inferred from the scheme
10 itself." We would just ask for the mirror instruction that
11 says, "As such, when the necessary result of a scheme is to
12 benefit others, a lack of fraudulent intent may be inferred."

13 MR. DISKANT: We would object to that.

14 THE COURT: No. OK.

15 MS. DONNELLY: With that, I have no more objections.

16 THE COURT: OK. Maybe we've broken the back of this,
17 which is good, because the jury will be here in three minutes,
18 we hope.

19 Mr. Diskant, this section for you?

20 MS. DONNELLY: Just to be clear, I think your Honor
21 asked the jury to come at 1, not 11.

22 THE COURT: I'm living in the past. Thank you. I do
23 that a little now and then.

24 MR. DISKANT: Your Honor, we just have one comment,
25 which is page 19, lines 4 through 6. We certainly would not

Iahdgat1

1 dispute that it is the government's burden to prove the
2 defendant guilty. We think it is a little misleading to say it
3 is the government's burden to prove beyond a reasonable doubt
4 that the defendant you are considering did not facilitate a
5 payment at the request of the university-employed coach,
6 because the defendant could actually still be guilty. And, in
7 fact, the government has conceded at least one of these
8 payments was facilitated by a university coach. The question
9 is whether or not the coach was acting in good faith.

10 We think the better articulation of this by the Court
11 is just in the next paragraph, and we think that's sufficient
12 to cover both of these points.

13 THE COURT: Let me read it.

14 (Pause)

15 What about that?

16 MS. DONNELLY: Your Honor, it's my understanding that
17 what your Honor was trying to do is on page 18, you say, look,
18 there are three points here. There is one, he's acting at the
19 request of an agent. Point two, and point three. And then
20 you've got the three -- then you've got the first point, the
21 second point and the third point. So as I understand it, all
22 that your Honor is doing is saying you can get to the
23 conclusion I talked about on page 18, point one, with this
24 paragraph. And we think it is true that unless the government
25 proves that -- the government can't prove that he was acting at

Iahdgat1

1 the request of an agent -- I mean, that to us seems like
2 something the government does have to prove.

3 THE COURT: I think you each have a point here. I
4 think the sentence that Mr. Diskant has a problem with is
5 redundant, actually, because on page 18, lines 3 through 5, I
6 charge that "A defendant has no burden to establish a defense
7 of good faith. It remains the burden -- the government's
8 burden to prove fraudulent intent and the consequent lack of
9 good faith beyond a reasonable doubt."

10 I think that covers the whole following discussion of
11 the three points, and then I can just delete the sentence on
12 page 19, lines 4 to 6. Anybody have a problem with that?

13 MS. DONNELLY: I might. Would you give me one moment
14 to consult with Mr. Schachter?

15 (Pause)

16 We liked it the way the Court had it.

17 THE COURT: Give me a minute.

18 MS. DONNELLY: Sorry.

19 (Pause)

20 THE COURT: OK. I'm sorry.

21 MS. DONNELLY: All I was going to say is that, you
22 know, we preferred it the way the Court had it, but assuming
23 that our objection to Mr. Diskant's proposal is preserved, we
24 can move on.

25 THE COURT: Assuming Mr. Diskant's proposal is

Iahdgat1

1 preserved, what does that mean?

2 MS. DONNELLY: Meaning our objection. Mr. Diskant
3 wants that language cut, correct? We would like it in there.

4 (Pause)

5 (Continued on next page)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IAH8GAT2

1 THE COURT: I think a possible alternative way of
2 handling this is as follows. Starting at page 19, I go through
3 each of the three points that we have been discussing. And at
4 the end of the discussion of each of the three points, there
5 appears essentially the same statement that it is the
6 government's burden to prove each time.

7 Now, that's pretty repetitious, first of all. And an
8 alternative way to handle this is to take out all three of
9 those repetitions, but to insert at page 20, after line 8 --
10 actually to repeat the first sentence that appears in the first
11 full paragraph on page 18 -- "that a defendant has no burden to
12 establish a defense of good faith. It remains the government's
13 burden to prove fraudulent intent and the consequent lack of
14 good faith beyond a reasonable doubt."

15 What about that?

16 MS. DONNELLY: Can I have one moment?

17 I would make one more addition along with that, and
18 that is on page 18, line 15, I would insert after the phrase
19 "they acted" "in good faith," which would make it all clearer,
20 I think.

21 How about that?

22 MS. DONNELLY: Well, I guess what Mr. Schachter and I
23 have come to terms with is we would prefer to just go back to
24 what Mr. Diskant wanted, which was to strike the sentence on
25 page 19 from 4 to 6 and leave everything else as your Honor has

IAH8GAT2

1 it, except I would take you up on that last suggestion on page
2 18 to add to line 15 "in good faith" there.

3 THE COURT: Mr. Diskant?

4 MR. DISKANT: I think that's fine. I would ask the
5 Court to consider, if we are doing that, actually cutting on
6 page 19, line 3, the sentence before, "I remind you, however,
7 that the burden is on the government to prove each defendant
8 guilty." It just sort of seems random, and I think it is
9 covered by what you are then going to say starting at line 10
10 through 15.

11 THE COURT: So the proposal is "in good faith" on page
12 18, line 15.

13 MR. DISKANT: We have no objection to that.

14 THE COURT: Striking the last sentence of the first
15 paragraph on 19.

16 MR. DISKANT: The last two sentences.

17 THE COURT: Does that work?

18 MS. DONNELLY: That's fine, your Honor.

19 To move on very quickly, I have to make a confession.
20 When your Honor asked if the defense was done with this
21 section, I was nervous and I forgot that I have to make good
22 faith argument on behalf of Mr. Haney, and I am wondering if
23 your Honor would let me do that very quickly.

24 THE COURT: Sure.

25 MS. DONNELLY: In our proposed instructions we asked

IAH8GAT2

1 for a good faith instruction that was based on *United States v.*
2 *Regan*, which is a Second Circuit case that says, and I want to
3 get this exactly right --

4 THE COURT: Which of your instructions?

5 MS. DONNELLY: So the ones that we started with. So
6 those are the ones filed on August 23.

7 THE COURT: So which one?

8 MS. DONNELLY: Sorry. Page 17, the first full
9 sentence. "For example, if you determine that the defendant
10 you are considering believed in good faith that the NCAA rules
11 permitted him to act as he did, that good faith belief
12 precludes a finding of criminal liability and you must find the
13 defendant not guilty."

14 THE COURT: Mr. Diskant.

15 MR. DISKANT: Your Honor, we would object to that for
16 a number of reasons. I can speak to it if you want. I think
17 the most important point is that a belief that NCAA rules
18 permitted him to act as he did or didn't do would have very
19 little bearing on the particular facts of this case.

20 By contrast, in *Regan*, the issue is whether or he
21 believed the tax code allowed him to engage in the particular
22 tax conduct that he was engaged in in that case, which is not
23 what this one is about.

24 MS. DONNELLY: I would disagree. What was going on in
25 *Regan* was that the defendant was arguing, look, there is this

IAH8GAT2

1 other section of the tax code 1058. I think what I did was OK
2 there, and, therefore, your allegation that I defrauded someone
3 here, that's inappropriate. I was acting in good faith.

4 I don't see that as significantly different than Mr.
5 Diskant saying -- excuse me, Mr. Dawkins saying, I reasonably
6 believed that this preexisting rule exception applied to me, I
7 didn't therefore think it would be a NCAA rule violation for
8 Mr. Bowen to take the money from me, and therefore that
9 constitutes good faith.

10 Of course Mr. Diskant could argue to the jury that
11 that's crazy, but we would ask, based on the reversal in *Regan*,
12 that your Honor put in such an instruction.

13 MR. DISKANT: On these facts, your Honor, I don't
14 think this instruction would be necessary to that argument. If
15 he wants to argue he didn't believe the certifications were
16 false, because he believed he was allowed to do it, he is free
17 to do that. I don't think there is very much evidence from
18 which to make that argument, but he is free to make that
19 argument. This just invites more speculation into NCAA rules
20 when, as we all discussed at length, all the defendants opened
21 on the fact that the NCAA rules were violated.

22 THE COURT: Well, yes.

23 MS. DONNELLY: I know Mr. Haney isn't here, but he did
24 say in his opening statement, he talked about the preexisting
25 relationship.

IAH8GAT2

1 THE COURT: Oh, I remember. And I learned more about
2 Saginaw, Michigan than I ever wanted to know.

3 MS. DONNELLY: Trust me, me too.

4 THE COURT: I will think about it. I will let you
5 know before Mr. Haney starts.

6 Anything else on this section from either side?

7 MR. SCHACHTER: Your Honor, just if I may, now that I
8 am thinking about Mr. Haney, on the point about the defendants'
9 concessions in the opening statements, I have not had a chance
10 to study Mr. Haney's opening statement, and given that part of
11 his defense is that, at least from Mr. Dawkins's perspective, I
12 think the NCAA rules were violated, I ask your Honor to
13 consider the statement about the concession in light of Mr.
14 Haney's both comments and potential defense.

15 THE COURT: Mr. Schachter, all good things come to an
16 end, including the charge conference. Now, you delegated this
17 whole section to Ms. Donnelly, and no offense, I am just not
18 going to do it this way.

19 MR. SCHACHTER: Yes, your Honor.

20 THE COURT: All right.

21 We are done through page 21, line 13.

22 Page 21, line -- I said line 13, I meant line 3.

23 Page 21, line 4 through willful causation. But before
24 you leap to that, I have made a change on line 6, page 23.
25 After the words "money or property," I am going to insert the

IAH8GAT2

1 words "as I have defined that term previously."

2 OK. Through 23, line 16.

3 Ms. Donnelly.

4 MS. DONNELLY: Yes, your Honor. No objection to
5 anything in the third element.

6 On willful causation, we have a small request. On
7 line 5, your Honor says, "Accordingly, one who intentionally
8 causes another person to make a material false statement." We
9 are concerned that the jury won't really understand what
10 "intentionally causes" means. I confess, I didn't know what it
11 meant until this case. I spent a lot of time looking at it.
12 For that reason, we would ask that your Honor add a sentence
13 concerning what it means to intentionally cause someone that is
14 consistent with the Third Circuit's instruction in *United*
15 *States v. Gumbs*.

16 THE COURT: I am not going to charge *Gumbs*. I
17 disagree with it.

18 MS. DONNELLY: Understood, your Honor.

19 THE COURT: It's not the law in this circuit.

20 MS. DONNELLY: Then with that, the defense does not
21 have any other objections to that section.

22 Sorry.

23 THE COURT: Mr. Diskant.

24 MR. DISKANT: Nothing, your Honor.

25 THE COURT: Conscious avoidance, which takes us to the

IAH8GAT2

1 end of page 24.

2 MR. SCHACHTER: Your Honor, Ms. Donnelly has one other
3 comment.

4 MS. DONNELLY: As you have done throughout, if your
5 Honor would consider adding to the very end on line 10, "caused
6 to make that false statement," "if the government fails to
7 prove beyond a reasonable doubt that the defendant knew and
8 intended the false statement to be made, you may not find that
9 the defendant willfully caused." Just to sort of sum up.

10 THE COURT: I don't think it's necessary.

11 Next section. I take it, in light of the discussion
12 before, there is really nothing further to be said on conscious
13 avoidance, right?

14 MR. SCHACHTER: Beyond the lack of factual predicate,
15 your Honor?

16 THE COURT: Well, what is the argument that there is
17 no factual predicate?

18 MR. SCHACHTER: In order for there to be a conscious
19 avoidance instruction, as I understand the law, there needs to
20 be a factual predicate that the defendant was taking some
21 action to willfully blind him or herself from the fact that the
22 jury should infer knowledge of, and the government has not
23 presented any evidence of Mr. Gatto willfully blinding himself,
24 taking any particular action with respect to any rules. The
25 government has not presented any evidence that suggested that

IAH8GAT2

1 there was any rule that was -- they haven't shown any linkage
2 between him and the rule. So absent some kind of basis to
3 suggest that he was taking some action to blind himself, then
4 there is no factual predicate for the charge.

5 THE COURT: You mean we have got to bring in the black
6 hood he put over his head?

7 MR. SCHACHTER: The instruction is designed for the
8 circumstance where, here's a bag, can you drive it across town?

9 THE COURT: You are given \$20,000 for it and you don't
10 ask whether it's heroin. I understand.

11 MR. SCHACHTER: Correct. That's the factual predicate
12 that is necessary.

13 THE COURT: What is the action that the person takes
14 in that hypothetical?

15 MR. SCHACHTER: He drives and he is holding a bag and
16 he doesn't look in it.

17 THE COURT: That's an action he didn't take.

18 MR. SCHACHTER: That's right. By not opening up the
19 bag he is blinding himself to what is in the bag, and
20 considering the fact that he has been given \$20,000 to drive
21 across town, that's a factual predicate that the person has
22 willfully blinded himself.

23 Here, the government has not presented any evidence of
24 any action that Mr. Gatto took to blind himself to that. So
25 that's one objection. There's two. The other is the

IAH8GAT2

1 government proposes a conscious avoidance instruction really in
2 order to demonstrate intent. And conscious avoidance has to do
3 with knowledge of a fact and not intent. Here, the intentional
4 act --

5 THE COURT: That is just inconsistent with what the
6 charge says.

7 MR. SCHACHTER: Well, I guess my point is, when you're
8 talking about wire fraud, it is an intent to defraud through
9 false statements, and so the false statements have to be
10 intended. And so you can't, in a wire fraud case, my view,
11 consciously avoid the making of false statements because that
12 is the mens rea that is required.

13 THE COURT: No one is saying you have to consciously
14 avoid making false statements. That's not the argument. The
15 argument is that, if you claim that this guy had no idea, the
16 government has failed to prove this guy had any idea, that
17 anybody was going to certify that there were no payments, that
18 the kid was eligible -- you know what we are talking about --
19 it's the government's position that the facts in this case
20 demonstrate that if he was ignorant in that way, he could only
21 have been so by deliberately avoiding confirmation of the fact
22 that those statements had to be made to get the scholarships
23 that he was putting up the money to facilitate the kids
24 getting.

25 MR. SCHACHTER: My point --

IAH8GAT2

1 THE COURT: That's the fact.

2 MR. SCHACHTER: My point is the government needs to
3 present evidence of some action taken by Mr. Gatto to blind
4 himself. In order to get that instruction, it cannot simply be
5 the government hasn't presented evidence and therefore --

6 THE COURT: It can be like not asking, as you said.

7 Mr. Diskant, anything you want to add that?

8 MR. DISKANT: No, your Honor. We agree with the Court
9 on this.

10 THE COURT: Overruled.

11 Anything from the government on conscious avoidance?

12 MR. DISKANT: No.

13 THE COURT: Anything from either side on aiding and
14 abetting?

15 MR. DISKANT: No, your Honor.

16 MS. DONNELLY: No, your Honor.

17 THE COURT: Page 28, line 12 through page 31, line 13.

18 MS. DONNELLY: I just want to check those numbers.

19 A small insertion, your Honor. On page 28, at line
20 19, it says "to commit wire fraud," and we would propose that
21 your Honor say "to commit wire fraud by defrauding the
22 universities I mentioned earlier."

23 THE COURT: Mr. Diskant.

24 MR. DISKANT: That's fine, your Honor. I don't think
25 we have an objection to that.

IAH8GAT2

1 THE COURT: I don't think it's fine. Is it the
2 government's position that in order to convict they have to
3 find an agreement to defraud each and every one of the four?

4 MR. DISKANT: Yes. Thank you, your Honor.

5 THE COURT: And you know that's where they are going
6 because it's in their requests to charge.

7 MR. DISKANT: Yes, your Honor. I apologize. You're
8 correct.

9 MS. DONNELLY: I understand that objection. That
10 actually wasn't where we were going to go, so let me correct
11 what I would ask you to say.

12 "To commit wire fraud against universities." I just
13 want to be clear it's not just wire fraud, right? We don't
14 have to say "the four," we don't have to say "each of the
15 four," just "the universities."

16 THE COURT: One or more?

17 MS. DONNELLY: One or more would be fine. That's
18 correct.

19 THE COURT: I will give you that.

20 MR. DISKANT: That's fine.

21 THE COURT: That's at page 28, at the bottom of the
22 page?

23 MS. DONNELLY: Correct.

24 Then we would ask that your Honor make that same
25 addition, exactly as we have just discussed, on page 30, at

IAH8GAT2

1 line 17. So it says "to commit wire fraud," and then you would
2 add it right in there.

3 THE COURT: Right. Fine. Done.

4 MR. MOORE: Can I have a moment to discuss something
5 with them very briefly?

6 THE COURT: Yes.

7 MR. MOORE: I am just wondering about the interplay of
8 that with the multiple conspiracy instruction given the facts
9 of my client's case. But I will agree with it. I think we can
10 still argue multiple conspiracies.

11 THE COURT: Let's continue.

12 MS. DONNELLY: Yes, your Honor.

13 To be clear, I think your Honor said to stop at 31.

14 THE COURT: 31, line 13.

15 MS. DONNELLY: The defense has nothing further.

16 THE COURT: Thank you.

17 Mr. Diskant.

18 MR. DISKANT: Nothing, your Honor.

19 THE COURT: 31, line 15, through 34, line 14.

20 MS. DONNELLY: Just one, your Honor. On page
21 33 -- actually, I don't really care where it goes.

22 I'm sorry. I don't mean it that way.

23 The instruction as written does not require the jury
24 to find a mental state of intent to defraud, and under *United*
25 *States v. Ingram*, which is a Supreme Court case, the Supreme

IAH8GAT2

1 Court said, "Conspiracy to commit a particular substantive
2 offense cannot exist without at least" -- this is in italics --
3 "the degree of criminal intent necessary for the substantive
4 offense itself. The substantive offense itself requires
5 knowledge, willfulness, and specific intent to defraud."

6 So we would just ask for "specific intent" to be added
7 here.

8 THE COURT: Mr. Diskant.

9 MR. DISKANT: Your Honor, I think the Court tells the
10 jury that in substance at page 31, lines 20 and 21, where it
11 says they must have "participated in the conspiracy with
12 knowledge of its unlawful purpose, and with an intent to aid in
13 the accomplishment of its unlawful objective -- that is, the
14 commission of wire fraud."

15 If it might solve this issue, the Court could add
16 something along the lines of, I have already instructed you on
17 what wire fraud consists of and you should follow those
18 instructions here.

19 THE COURT: I think that covers it, doesn't it?

20 MS. DONNELLY: The only thing I would say is that
21 specific intent to defraud is the most important part of
22 defendants' case. So rather than just saying it's already
23 covered in substance, we would ask your Honor to add a short
24 sentence, or even to here, at the bottom of 23 -- excuse me,
25 page 31, line 23, that he unlawfully, willfully, and with a

IAH8GAT2

1 specific intent to defraud entered into the conspiracy. Those
2 five words and we would be satisfied.

3 MR. DISKANT: Your Honor, I guess I think that's fine,
4 provided the Court reminds the jury that it has previously
5 instructed them on what that term means, because it is a little
6 bit confusing. I think the easier way is to simply say, I have
7 instructed you on what wire fraud is. You should follow those
8 instructions.

9 THE COURT: But this is an occasion for subdividing
10 the baby.

11 Give me your language, please.

12 MS. DONNELLY: So on page 31, there is a sentence at
13 line 22, it says "each defendant's own actions and conduct that
14 he unlawfully, willfully" -- I would get rid of "and." I would
15 say "knowingly and with a specific intent to defraud entered
16 into the conspiracy."

17 MR. DISKANT: I think you should add it at the end of
18 the sentence if you are going to do that.

19 THE COURT: I am going to take Ms. Donnelly's version.

20 OK. Anything else from either side?

21 MR. MOORE: Your Honor, so what language would you use
22 exactly?

23 THE COURT: Unlawfully, willfully, knowingly and with
24 specific intent to defraud.

25 MR. MOORE: Yes, sir. Thank you.

IAH8GAT2

1 THE COURT: Anything else from either side through 33,
2 line 14?

3 MS. DONNELLY: No, your Honor.

4 THE COURT: 34, line 15, through 37, line 8.

5 MS. DONNELLY: Nothing from the defense.

6 MR. DISKANT: Your Honor, we are concerned about the
7 multiple conspiracies charge. I won't reiterate what is in our
8 papers. We don't believe that there is a factual predicate
9 that has been established in this case for the instruction
10 that's been given.

11 THE COURT: What is missing?

12 MR. DISKANT: So the Ninth Circuit's articulation of
13 this -- and I quote the Ninth Circuit only because I don't
14 believe the Second Circuit has directly addressed this issue --
15 provides that a multiple conspiracy instruction is appropriate
16 only where the proof at trial indicates that a jury could
17 reasonably conclude that some of the defendants were only
18 involved in separate conspiracies unrelated to the overall
19 conspiracy charged in the indictment. And that's not the case
20 here.

21 THE COURT: Obviously, we don't have to talk about
22 Gatto, but talk about the others.

23 MR. DISKANT: The conspiracy alleged in the indictment
24 at a bare minimum includes the Louisville scheme, and I don't
25 believe that there is any dispute that all three of the

IAH8GAT2

1 defendants participated in at least the conduct giving rise to
2 that scheme.

3 The argument, as I understand it, is a not a multiple
4 conspiracies argument. It is an argument that Mr. Code and Mr.
5 Dawkins joined the conspiracy midway through because the
6 Louisville conduct was the last component of the conduct that
7 the government proved up. That's not a multiple conspiracies
8 count. That's an issue of when during the duration of the
9 conspiracy each defendant joined.

10 The government has no intention of arguing that
11 Mr. Code or Mr. Dawkins was involved in the payments to the
12 family of Billy Preston or Silvio De Sousa or Dennis Smith,
13 Jr., all of which we would agree predate their joining the
14 conspiracy. But the fact that they joined the conspiracy
15 midway through, as the Court instructs the jury, doesn't defeat
16 a finding that they were members of the conspiracy.

17 We think instructing the jury on multiple conspiracies
18 on these facts would be very, very confusing because it is a
19 very confusing issue. Going back to the Second Circuit, the
20 Second Circuit's leading case on this, the *Tramunti* case --

21 THE COURT: Tell me the name again.

22 MR. DISKANT: *United States v. Tramunti*,
23 T-R-A-M-U-N-T-I, is fundamentally distinct. There, there were
24 two different and dueling competing drug trafficking crews that
25 the government sought to link by virtue of the fact that they

IAH8GAT2

1 shared a common supplier. So on those facts, there was a real
2 legitimate issue about whether or not there was one overarching
3 conspiracy or two different drug conspiracies that just so
4 happened to buy from the same source.

5 That is completely inapposite with the facts here,
6 where there is really no question that at least for a
7 significant -- for purposes of this trial -- moment in time,
8 all of these defendants were acting in concert to achieve the
9 same goal.

10 THE COURT: Let's back up to *Tramunti* for a minute.

11 *Tramunti* holds, am I correct in understanding, error
12 to give or error not to give a multiple conspiracy charge?

13 MR. DISKANT: Certainly not error not to give. In
14 that case there was an instruction given. The defendants on
15 appeal claimed that the instruction was insufficient, and the
16 Second Circuit said, no, we think the instruction was OK.

17 THE COURT: But in terms of the instruction being OK
18 given the premise that it was an appropriate case in which to
19 give a multiple conspiracy charge.

20 MR. DISKANT: It doesn't seem like -- and that's part
21 of the reason why I said the Second Circuit hasn't really ever
22 squarely addressed this issue. That particular issue doesn't
23 seem to have been a significant point of discussion.

24 THE COURT: That's my point. You can sure have a
25 hub-and-spoke conspiracy, which is what your description of the

IAH8GAT2

1 facts in *Tramunti* described. You have a drug supplier who is
2 known, presumably, by his customers to be engaged in a drug
3 distribution operation, and each of the customers doesn't even
4 know the identities of the other customers. But it would be
5 open to the government on those facts to argue that there was a
6 single overreaching conspiracy on the ground that, given the
7 nature of the business, and the nature of the role of the
8 supplier, it was more than reasonably foreseeable to each
9 customer that he was not the only customer, there were lots of
10 them, and that each of them had an understanding with the
11 distributor, the supplier, that they would move his drugs. And
12 so a single conspiracy could be charged and result in a
13 conviction. But I suppose -- and the defense would also have
14 an argument on those facts -- there might be just a whole
15 series of independent distribution deals between the supplier
16 and each customer. Do I have that right?

17 MR. DISKANT: Yes, your Honor.

18 THE COURT: OK. So that is an entirely different
19 case, particularly as it doesn't address this question.

20 Now, I suppose the issue here -- and I am sure Mr.
21 Moore is going to weigh in on this in about a minute.

22 MR. MOORE: Only if invited, your Honor.

23 THE COURT: Oh, come on, you're not that bashful.

24 -- is that it's a fair argument to say that Mr. Code
25 may have conspired with Gatto, but that doesn't mean he

IAH8GAT2

1 conspired with everybody else and that's a different
2 conspiracy. Is that your argument?

3 MR. MOORE: That is a part of the argument, your
4 Honor. The facts of this case, the jury can conclude that Mr.
5 Gassnola, when he made the earlier payments, was acting on his
6 own, perhaps with the imprimatur of Mr. Gatto, but that was a
7 separate agreement, a separate understanding, than the
8 understanding that Mr. Code had with Mr. Gatto in this
9 instance.

10 THE COURT: Isn't there just a vast amount of evidence
11 in this case that Mr. Code, and certainly Mr. Dawkins, they
12 knew what was going on here. They knew, or believed anyway, it
13 was widespread and that Adidas was putting up money to get kids
14 to Adidas schools. Why isn't that enough to say no to the
15 multiple conspiracy?

16 MR. MOORE: It's not enough to say no to the multiple
17 conspiracy, your Honor, because there is no evidence that they
18 knew that TJ Gassnola was running around making payments,
19 particularly with TJ Gassnola's claim that nobody at these
20 other universities, except for Orlando Early, knew about these
21 payments.

22 THE COURT: But the conspiracy is Gassnola and Adidas,
23 at a minimum.

24 MR. MOORE: Your Honor, there is no evidence that each
25 of these payments are connected as part of one unitary,

IAH8GAT2

1 solitary scheme, we say. And we think we ought to be allowed
2 to make that jury argument, given the facts of this case.
3 Mr. Code was not at Adidas when a number of these payments were
4 made.

5 THE COURT: But that doesn't matter. You know that
6 doesn't matter.

7 MR. MOORE: It would not matter if he knowingly and
8 willfully joined the conspiracy, perhaps. However, there is no
9 evidence that he knew about those payments, that he was
10 involved in those particular payments.

11 THE COURT: He doesn't need to have known about the
12 payments, any more than the drug suppliers, in my hub-and-spoke
13 example, would need to know about even a single other purchase
14 of drugs by some other street seller.

15 MR. MOORE: Your Honor, with respect to the Bowen
16 payments, you have got players who were separate and distinct
17 from what you had before. Mr. Sood claims, for example, that
18 he is an alleged conspirator in this instance. The government
19 claims that Mr. Dawkins is a participant in this alleged
20 conspiracy. There is no explanation for how Mr. Sood might
21 have fit into the overall context of one unitary conspiracy.
22 And we believe, your Honor, that the facts in this case allow
23 for an argument of multiple conspiracies because we believe the
24 facts show that there is no one overarching agreement to which
25 Mr. Code knowingly and willfully joined.

IAH8GAT2

1 THE COURT: What is your best case?

2 MR. MOORE: *McDermott*.

3 THE COURT: Give me the citation, please.

4 MR. MOORE: The cite is 245 F.3d at 133. It's a
5 Second Circuit case.

6 THE COURT: We are going to convert you yet.

7 MR. MOORE: It takes me a while, Judge, but hopefully
8 I will ultimately get there.

9 MR. SCHACHTER: Your Honor, I would just like to
10 channel Mr. Haney when your Honor has a moment.

11 THE COURT: Channel away.

12 MR. SCHACHTER: I think that Mr. Dawkins in particular
13 has a compelling argument for a multiple conspiracy
14 instruction. I believe that Mr. Haney would say that Mr.
15 Dawkins is a free agent that is not joining anybody with any
16 common aims or objectives. He doesn't really have any kind of
17 agreement that he ever wants to reach or cares to reach with
18 anybody. He is all about just finding ways to provide money to
19 families so that they will hire him as an agent. In fact, I
20 think he would say that the conspiracy -- really even in
21 paragraph 1 of the indictment -- talks about two distinct
22 objectives. One is to convince family members to hire Mr.
23 Dawkins as a manager if they ever make it to the NBA. And the
24 other is an objective that he couldn't care less about. And I
25 think it's those two different objectives -- and for that

IAH8GAT2

1 matter, Mr. Gatto certainly doesn't care if anybody hires Mr.
2 Dawkins as an agent or a business manager, that's not in any
3 way an objective of Mr. Gatto, and so I think Mr. Dawkins would
4 say that, given the very different objectives that are laid out
5 in the indictment, that's really what makes this case
6 appropriate for a multiple conspiracy instruction.

7 MR. MOORE: If I could just try to gild that lily for
8 a moment, the same goes for Mr. Sood, who is an alleged
9 conspirator in this conspiracy.

10 THE COURT: Can somebody direct me to the part of
11 *McDermott* that you say supports the giving of a multiple
12 conspiracy charge?

13 MR. SCHACHTER: I can describe it because it's a fun
14 set of facts.

15 THE COURT: No.

16 MR. SCHACHTER: 137 is the pin.

17 THE COURT: Thank you. I am sure it's a fun set of
18 facts. Only lawyers talk about fun sets of facts.

19 Mr. Diskant, why shouldn't I give this instruction
20 once more, with feeling?

21 MR. DISKANT: The short answer is that none of the
22 things that the defendants have said have taken away from the
23 fact that there was an agreement, a meeting of the minds to
24 make the Bowen payment, or at least that that is what is at the
25 center of this case. So really what their arguments are about

IAH8GAT2

1 are when they joined the conspiracy and what their objectives
2 were with respect to that conspiracy.

3 The *Berger* case, for example, that the Court cites in
4 support of the multiple conspiracies charge -- which in
5 fairness to the Court I am sure came from one of our
6 submissions -- says that, even if the evidence shows that more
7 than one conspiracy exists, you may still find the conspiracy
8 charged here in Count One exists if it happens to be one of
9 those conspiracies.

10 THE COURT: But that's not the issue.

11 MR. DISKANT: I understand that, your Honor. The
12 point is there seems to be agreement -- and I think the
13 defendants would be hard-pressed to dispute this -- that under
14 a correct instruction of law, there is no basis for a jury to
15 find multiple conspiracies because at least one of the
16 conspiracies in these multiple conspiracies is the one charge.
17 Then this just becomes a hugely confusing distraction for the
18 jury.

19 There is really no basis for the jury to conclude on
20 these facts that there was never a meeting of the minds because
21 these were all -- to borrow the Court's example -- these
22 different spoke-and-wheel conspiracies. I think the defendants
23 opened on the fact that they all participated in this plan to
24 pay Brian Bowen. So at bare minimum there was a point when all
25 of the defendants charged in this case came to an agreement

IAH8GAT2

1 that the government alleges was criminal. The only real
2 question is when during the period of the charged conspiracy
3 the various defendants joined. And if they want to make
4 arguments about that fact that's perfectly fair game. They
5 have every right to do that. But getting into the issue of
6 multiple conspiracies, we just don't think there is a factual
7 predicate for it on this record and it is hugely confusing.

8 THE COURT: All right. I will let you know before you
9 start summations.

10 Nothing else through 37, line 8, right?

11 And venue is out.

12 MR. DISKANT: One final thing. If your Honor is
13 inclined to give a multiple conspiracies instruction, we would
14 ask that the Court consider substituting, at line 17 at page 35
15 through line 20, that final sentence, we would ask that the
16 Court instead consider the language I just read from *Berger*,
17 which is that even if the evidence shows that more than one
18 conspiracy exists, you may still find that the conspiracy
19 charged in Count One exists if it happens to be one of those
20 conspiracies.

21 THE COURT: If I decide to give this, anybody object
22 to that language?

23 MR. MOORE: No, your Honor. I think that is an
24 accurate statement of the law.

25 MR. SCHACHTER: We agree.

IAH8GAT2

1 THE COURT: OK. When we break, please give that
2 language to my law clerk.

3 Venue is out.

4 Section III, starting on page 39, anything on that
5 from the defense?

6 MS. DONNELLY: No, your Honor.

7 THE COURT: Government.

8 MR. DISKANT: How far did the Court want us to go?

9 THE COURT: It actually goes two pages.

10 MR. DISKANT: No.

11 THE COURT: Section IV, starting on page 41 and
12 running over to, way too far, page 50.

13 Defense.

14 MS. DONNELLY: No, your Honor.

15 THE COURT: Government.

16 MR. DISKANT: It's a very small point, your Honor. On
17 page 48, in the evidence obtained pursuant to searches, there
18 are actually multiple searches. So we might suggest at line 25
19 you say "for example" rather than "in particular."

20 THE COURT: Line 25?

21 MR. DISKANT: Yes, your Honor.

22 THE COURT: So you would say, "for example, e-mail
23 evidence"?

24 MR. DISKANT: Yes, your Honor.

25 THE COURT: I assume there is no objection to that.

IAH8GAT2

1 MS. DONNELLY: No. That's fine.

2 THE COURT: Anything else through page 50?

3 Anything else from 51 to the end?

4 MR. SCHACHTER: No, your Honor.

5 THE COURT: OK.

6 MR. MOORE: Could I confer with my folks for just a
7 second?

8 THE COURT: Yes.

9 MR. MOORE: Your Honor, we are rethinking a specific
10 venue issue with respect to Counts Two and Three. Can we have
11 a moment to confer with the government?

12 THE COURT: Briefly.

13 MR. MOORE: Yes, sir. I understand.

14 We adhere to our previous position.

15 THE COURT: So I have two questions to get back to you
16 on. One is whether I will give the multiple conspiracy
17 instruction as amended by Mr. Diskant or not give it at all.
18 And the other is the good faith language that was requested
19 with respect to the NCAA rules. And I will tell you that
20 before we bring the jury in.

21 MR. MOORE: Will we actually get a new written version
22 of your Honor's charge?

23 THE COURT: We will when I am ready to charge.

24 MR. DISKANT: I have two quick additions to propose.

25 THE COURT: OK.

IAH8GAT2

1 MR. DISKANT: The first is that the government had
2 requested an instruction on motive and, in particular, the fact
3 that motive is not an element of the offense. It's at page 32
4 of our requests. Given some of the statements from Mr.
5 Schachter, in particular, we believe there is a predicate for
6 it here, and we would ask the Court consider giving such an
7 instruction.

8 Then the second --

9 THE COURT: Let's take them one at a time.

10 You said it was at page 32 of your requests?

11 MR. DISKANT: Yes, your Honor. It's request 16.

12 THE COURT: I see. You're looking at different pages
13 than I am.

14 MR. DISKANT: I can just hand it up if that's easier.

15 THE COURT: All right. Hand it up, please.

16 MR. MOORE: Your Honor, again, I am from a different
17 district. I am just wondering if when your Honor's actual
18 written version is final, even if it's final before tomorrow,
19 would your Honor consider allowing the parties to have copies
20 of the written instructions? One of the reasons I am asking
21 for copies of your final written instructions is because I want
22 to adhere carefully to what your Honor told us in the robing
23 room yesterday.

24 THE COURT: These are matters of mechanics at this
25 point. I will accommodate you if I can and on reflection think

IAH8GAT2

1 it is right. You know what I am trying. You have been taking
2 notes. Mr. Schachter has ever syllable down.

3 MR. MOORE: I am not so sure that I do.

4 THE COURT: Is there any objection to my charging the
5 government's request number 16?

6 MR. SCHACHTER: Yes, your Honor. Your Honor's
7 instruction already says twice that there is no obligation of
8 the government to show a financial interest in the outcome. We
9 had asked and the government objected to us balancing that by
10 saying that a lack of financial interest is proof that there
11 isn't fraudulent intent. But I think that the government's
12 request here on motive is subsumed in the Court's instructions
13 which twice already say that lack of financial --

14 THE COURT: What page are you referring to?

15 MR. SCHACHTER: One moment, your Honor.

16 Yes. There's two. There is one on page 32, lines 19
17 through 21.

18 THE COURT: All right. It seems to me that the way to
19 skin this cat is on line 19, after the word "outcome," to
20 insert the words "or other motive." Insert the same two words
21 after the word "interest" on page 20. And then pick up the
22 substance of the last sentence of the government's request
23 number 16, "The presence or absence of a financial interest or
24 other motive is, however," and then just following as was
25 requested.

IAH8GAT2

1 MR. SCHACHTER: That's fine.

2 MR. DISKANT: Yes.

3 THE COURT: What else?

4 MR. DISKANT: We had also requested that the Court
5 give a very brief instruction on the redaction of evidentiary
6 items. There have been a lot of redactions in the case. I
7 imagine this is uncontroversial, but we would ask the Court to
8 just instruct that certain things have been redacted and that
9 the jury doesn't need to concern itself with that.

10 THE COURT: I am sure there are no objections to that,
11 right?

12 MR. SCHACHTER: No objection.

13 THE COURT: All right. I am just going to make a note
14 to myself at page 52, when I talk about ignoring citations, I
15 will say something to that effect. OK.

16 MR. SCHACHTER: Just a last point. We preserve for
17 the record the arguments that were made in our proposed jury
18 instructions and our objections to the government's proposed
19 jury instructions. We heard your Honor loud and clearly,
20 although not successfully, that we should be brief today.

21 THE COURT: My view of this is that we took into
22 account everything that was said in all of those voluminous
23 submissions. Out of all of it comes this proposed charge.

24 MR. SCHACHTER: Yes, your Honor.

25 THE COURT: And if you haven't raised an objection or

IAH8GAT2

1 a request here this morning, in my view, it's not preserved.

2 There we are. The Court of Appeals can do what it
3 wants should we ever get to that point.

4 There is a proposed verdict form. I will have Rachel
5 pass it out, and it will become Court Exhibit F.

6 Do you have it already?

7 MR. MOORE: She provided it this morning with the
8 charge.

9 THE COURT: Any objections to the verdict form?

10 MR. SCHACHTER: Our only request would be, when it
11 says Count One conspiracy to commit wire fraud, that just like
12 Count Two and three mention Louisville and Kansas, that that
13 have have a parenthetical that says university or universities.

14 THE COURT: This is total trivial.

15 Thank you. See you at 1:00.

16 (Luncheon recess)
17
18
19
20
21
22
23
24
25

A F T E R N O O N S E S S I O N

1:11 p.m.

(Mr. Mark and Mr. Haney present)

(Jury not present)

THE CLERK: Please be seated.

THE COURT: OK. Are we ready to go?

I owe you an answer. We are going to give the multiple conspiracy charge as amended. And the good faith charge that was requested is in here, not in precise form but in substance.

(The Court conferred with the law clerk)

THE CLERK: Jury entering.

(Continued on next page)

Iahdgat3

Summation - Mr. Solowiejczyk

1 (Jury present)

2 THE CLERK: Please be seated, everyone.

3 THE COURT: Afternoon, folks.

4 The jurors and defendants all are present.

5 We are now going to hear closing argument, beginning
6 with the government.

7 Mr. Solowiejczyk.

8 MR. SOLOWIEJCZYK: Thank you, your Honor.

9 THE COURT: And let me just -- OK. You anticipated
10 me. Thank you. Go ahead, Mr. Solowiejczyk.

11 MR. SOLOWIEJCZYK: Good afternoon.

12 Ladies and gentlemen, you have now seen all of the
13 evidence. You have heard all of the testimony. And you now
14 know that these defendants are guilty. Guilty because they
15 funneled tens of thousands of dollars in secret payments to the
16 families of student-athletes to get them to go to
17 Adidas-sponsored schools. Guilty because they knew that those
18 secret payments made the student-athletes ineligible to
19 compete. Guilty because they knew that the universities never,
20 ever, would have issued athletic scholarships to those
21 student-athletes had they known about these payments. Guilty
22 because they went to great lengths to conceal and hide those
23 payments from the universities by arranging for envelopes
24 stuffed with cash to be handed off in New Jersey parking lots,
25 in Manhattan hotel rooms, by submitting bogus invoices to

Iahdgat3

Summation - Mr. Solowiejczyk

1 Adidas to paper over the payments, by routing the payments
2 through multiple bank accounts in order to make them harder to
3 trace, and by using secret second phones to further conceal
4 their involvement.

5 Guilty because at bottom, ladies and gentlemen, they
6 committed fraud.

7 Now, ladies and gentlemen, you've learned a lot about
8 the underbelly of college basketball over the course of the
9 past two-and-a-half weeks. You've heard about the five-star
10 recruits, the AAU basketball teams, the shoe wars, and the
11 black ops. But when you cut through all of that, when you get
12 to the heart of the matter, this is a very simple case. The
13 defendants caused lies to be told to universities. They caused
14 information to be provided to them that was false in connection
15 with these universities' decision to award athletic
16 scholarships. And as a result of those lies and that
17 concealment, universities provided athletic scholarship money,
18 actual money, to student-athletes who weren't even allowed to
19 compete in the sport for which they had received a scholarship.

20 If the universities had known about the defendants'
21 secret payment, they never would have issued those
22 scholarships, they never would have put themselves in harm's
23 way and risked NCAA penalties, fines, and forfeiture of
24 contests. You now know all of that as well, ladies and
25 gentlemen, and, more importantly, so did the defendants.

Iahdgat3

Summation - Mr. Solowiejczyk

1 In this country, when you lie to someone to get them
2 to part with their money, when you cause a university to issue
3 financial aid to students who aren't even entitled to it,
4 that's a crime. It's called fraud. And that's exactly what
5 the defendants did here. Because let's be very clear about
6 something, ladies and gentlemen, just because this case happens
7 to take place in the world of college basketball, it doesn't
8 mean that the same laws do not apply. They very much apply.
9 Plain and simple.

10 So, ladies and gentlemen, the purpose of this closing
11 statement is to walk through all of the evidence that proves to
12 you beyond a reasonable doubt that these defendants are guilty,
13 and that evidence in this case has been overwhelming. So I
14 want to start out by talking to you about the key reasons why
15 you know these defendants are guilty. So let's start with the
16 first reason.

17 You know the defendants are guilty because you know
18 that the defendants made these payments, secret payments, tens
19 of thousands of dollars, to the families of student-athletes in
20 connection with those student-athletes attending
21 Adidas-sponsored schools. You know this is the case from the
22 overwhelming evidence that the government has presented over
23 the past two-and-a-half weeks. Wiretap recordings, text
24 messages, bank records, phony invoices that were submitted to
25 Adidas, taken together they all show you that these defendants

Iahdgat3

Summation - Mr. Solowiejczyk

1 were each integrally involved in the payments to the families
2 of student-athletes.

3 I'm just going to walk you through very briefly,
4 ladies and gentlemen, that evidence right now.

5 So let's start by talking about the plan that Jim
6 Gatto, Merl Code and Christian Dawkins cooked up to pay a
7 hundred thousand dollars to the father of Brian Bowen to get
8 his son to attend the University of Louisville, an
9 Adidas-sponsored university. Ladies and gentlemen, you know
10 from all the evidence that we have presented to you exactly
11 what happened here. In May of 2017, Brian Bowen Junior still
12 had not decided which school he was going to commit to. And
13 Christian Dawkins seized on that opportunity. He knew that Jim
14 Gatto and Merl Code were willing to pay tens of thousands of
15 dollars to get Bowen to go to an Adidas-sponsored university.

16 So, Dawkins reached out to Merl Code and he asked
17 him -- this was in the text messages -- "Any Adidas schools
18 that make sense for Bowen?" that was May 18th of 2017. And as
19 you know from the text messages, Merl Code wanted to make sure
20 that Bowen went to an Adidas school. And he wanted to make
21 sure that Bowen did not attend the University of Oregon, which
22 was a Nike-sponsored school, as you heard. And as you know,
23 Nike was a rival of Adidas. You heard a lot about that during
24 this trial.

25 And Code said it himself in a text message to Dawkins

Iahdgat3

Summation - Mr. Solowiejczyk

1 a few days later. "don't send Bowen to Oregon. Call me."
2 Because the only reason Code was doing this was he wanted to
3 make sure that Adidas got top players going to Adidas-sponsored
4 universities.

5 In the days that followed, Christian Dawkins, Merl
6 Code and Jim Gatto struck a deal. A dirty deal. Bowen Senior
7 would get a hundred thousand dollars in four installments of
8 \$25,000 each. These payments would be funded using phony
9 invoices that Merl Code submitted to Adidas and that Jim Gatto
10 pushed through at Adidas. And Bowen Junior would commit to
11 Louisville.

12 And you saw Dawkins tell Code himself, on May 30th:
13 Tell Jim. Let's get it done. I have to discuss with you the
14 set up in the a.m.

15 And you saw it the next day, Dawkins telling Code
16 again: The deal is pretty much done. Just need to get
17 everything lined up with Gatto and we can get scholarship
18 papers signed. I can hold off Oregon, I'm pretty sure.

19 And Code responded minutes later, on May 31st, that
20 the deal was set. It's done. We just need to get the letter
21 of intent signed, not just the scholarship papers.

22 And as you know, ladies and gentlemen, the day after
23 these text messages were exchanged, Brian Bowen committed to
24 Louisville and signed his Financial Aid Agreement.

25 You also know what happened next, ladies and

Iahdgat3

Summation - Mr. Solowiejczyk

1 gentlemen. As you heard from the wiretap calls that were
2 played for you during the trial, there were issues getting that
3 first \$25,000 funded. The phony invoice that Merl Code put in,
4 it wasn't approved as quickly as Merl Code and Jim Gatto
5 wanted. And you heard Dawkins tell Munish Sood all about this
6 in a wiretap call on July 7th of 2017.

7 He told him that the payment was for Brian Bowen to go
8 to Louisville, and he told him that the first \$25,000 was held
9 up. And so they had an ask. The ask was they wanted Munish
10 Sood and Jeff DeAngelo, Christian Dawkins' new business
11 partners, to front the first \$25,000. And you heard the call
12 where Merl Code talked to both Munish Sood and Jeff DeAngelo
13 about that. And he, just like Dawkins, explained exactly what
14 this money was for, ladies and gentlemen. That's the next
15 exhibit.

16 He told them -- he told them that he was introducing
17 them to the shoe wars and how stuff happens with kids in
18 getting into particular schools, and this is kind of one of
19 those instances where we needed to step up and help one of our
20 flagship schools in Louisville, you know, secure a five-star
21 caliber kid. So obviously that helps, you know, our potential
22 business in terms of, in terms of Adidas.

23 And, ladies and gentlemen, you know what happened
24 after that. On July 13, 2017, Munish Sood met Brian Bowen
25 Senior in a parking lot in New Jersey, and he handed him an

Iahdgat3

Summation - Mr. Solowiejczyk

1 envelope that contained close to \$20,000 in cash. Brian Bowen
2 Senior told you about that. Munish Sood told you about that.
3 And you heard about it in all the wiretap calls around that
4 time.

5 And, ladies and gentlemen, you also know that the
6 defendants were in the process of making the second \$25,000
7 payment. You saw the second phony invoice that Merl Code
8 submitted to Gatto from the Karolina Khaos. But, ladies and
9 gentlemen, you know that payment never happened because before
10 the payment could be made to Bowen Senior, the defendants'
11 scheme was stopped dead in its tracks and they were arrested.

12 And, finally, ladies and gentlemen, when it comes to
13 the Bowen scheme, you know that Jim Gatto was integrally
14 involved in all of this. You know he was the one that was
15 approving the sham invoices to fund these payments. And you
16 actually heard Gatto, on multiple occasions, talking about the
17 details of the payments. And this is just one example where he
18 was talking to Merl Code, and he specifically acknowledged, he
19 asked Merl Code, "What do we do with Bowen? A hundred?" he
20 knows the amount of money they promised Brian Bowen. Just like
21 Code and Dawkins, he was integrally involved in these payments.

22 So when you take all of that together, there can be no
23 dispute that these payments happened and that Jim Gatto,
24 Christian Dawkins and Merl Code were involved in these payments
25 from the outset.

Iahdgat3

Summation - Mr. Solowiejczyk

1 Now, ladies and gentlemen, as you heard, the scheme to
2 funnel these payments to Brian Bowen's father, this wasn't the
3 first time that Jim Gatto had been involved in this. This was
4 not his first rodeo. In fact, you heard that he had been
5 involved in making very similar payments to the families of
6 other student-athletes to get them to go to other
7 Adidas-sponsored schools.

8 So, let's start with Dennis Smith Junior. You heard
9 about him. And TJ Gassnola told you all about this scheme. He
10 told you that he went down to North Carolina and made a -- and
11 gave \$40,000 to Orlando Early, an assistant coach at NC State,
12 and that money was intended for Dennis Smith's father. And the
13 reason for the payment was because they were nervous that
14 Dennis Smith Junior wasn't going to actually commit to NC
15 State, that he was going to leave NC State.

16 And, Ms. Lee, if we could just go back to the previous
17 slide very briefly.

18 And what TJ Gassnola told you -- I'm going to walk you
19 through some examples of it -- it's corroborated by all of the
20 evidence that was presented to you. So let's walk through a
21 couple of those things.

22 He told you that he went down to North Carolina in
23 early November. Well, there is a credit card record from TJ
24 Gassnola showing that he went on a flight to Raleigh. There is
25 a bank record showing that a few days before that, he took out

Iahdgat3

Summation - Mr. Solowiejczyk

1 \$30,000. And there are also wire transfers from Adidas that
2 came in around this time that total \$40,000 and that were used
3 to fund these payments by Gassnola, to reimburse him for these
4 payments, as you heard

5 So you know that what TJ Gassnola told you is
6 corroborated by all of the evidence.

7 And you know that Jim Gatto participated in this
8 scheme to make payments to the Smith family. You heard about
9 it from TJ Gassnola, and you know it because the reason these
10 wire transfers were Adidas went to the New England Playaz, you
11 know why that happens. Because Jim Gatto is the one that
12 approves the sham invoices. That money doesn't get to the TJ
13 Gassnola without Jim Gatto approving it.

14 Ms. Lee, we can skip ahead to the phony invoices.

15 Go back one, Ms. Lee

16 One other thing you know, ladies and gentlemen, you
17 know that Dennis Smith committed to NC State less than two
18 weeks after TJ Gassnola made that payment, that payment that he
19 made with Jim Gatto. That was less than two weeks after he
20 made that payment. And that's no coincidence, ladies and
21 gentlemen.

22 So I want to also talk to you, ladies and gentlemen,
23 about another scheme that Jim Gatto was involved in.

24 You can move ahead a few slides, Ms. Lee.

25 And those are the payments to Billy Preston, the

Iahdgat3

Summation - Mr. Solowiejczyk

1 payments to Billy Preston's mother, of Kansas. And TJ Gassnola
2 told you about these payments. They total \$90,000, and they
3 were made in multiple installments. And the first payment was
4 a \$30,000 cash payment in Manhattan. Mr. Gassnola told you
5 that he met Ms. Player, Billy Preston's mother, in a Manhattan
6 hotel room and gave her \$30,000. And I want to walk through
7 why you know that that's what happened, because it's all
8 corroborated by the evidence.

9 So, going on to the next slide, Ms. Lee.

10 TJ Gassnola told you that he came to New York on
11 November 1, 2016 to make this payment to Ms. Player. Well, you
12 know he was in New York on November 1, 2016. There is a
13 parking receipt. He parked his car in New York.

14 And who did TJ Gassnola call the same day that he made
15 that \$30,000 payment to Nicole Player? He called Jim Gatto.
16 Because that's who he was coordinating with when it came to
17 these secret underground payments, like the payment to
18 Ms. Player.

19 And Gassnola told you, when he testified, about the
20 conversations that he had with Gatto when it came to the Billy
21 Preston payment. He told you that: Sometime after, Jim and I
22 had conversations all the time. One of my conversations was
23 Billy Preston's family is in a good place.

24 And he told you what that meant. It meant that they
25 had gotten money from us and that they are in a good place. He

Iahdgat3

Summation - Mr. Solowiejczyk

1 told Jim Gatto that.

2 You also know, ladies and gentlemen, that one day
3 before TJ Gassnola made that payment on November 1, 2016, you
4 know that he took \$50,000 out of his bank account, out of his
5 New England Playaz bank account. That is one day before the
6 November 1st meeting. And you also know that that was money
7 that he had recently gotten from Jim Gatto at Adidas. You've
8 seen the phony invoice that Gassnola submitted, and which you
9 know Gatto approved, that was submitted shortly before this
10 payment was made.

11 And that phony invoice was dated October 15, 2016. It
12 was for \$50,000. And it was supposedly for basketball team
13 tournament fees. But, ladies and gentlemen, as you heard from
14 both Mr. Gassnola and from Ricky Robertson, who ran the
15 Karolina Khaos, basketball tournament fees range from \$500 to a
16 thousand dollars. And everybody in the college basketball
17 world, in the grassroots world, knew that. So this phony
18 invoice that Jim Gatto approved, it was fake on its face. It
19 was pure fiction. It was pure bogus invoice. And there is no
20 way Gatto didn't know that when he approved it.

21 These phony invoice, ladies and gentlemen -- I'm going
22 to talk about them a little bit later in more detail -- they
23 are devastating evidence that Jim Gatto knew that what he was
24 doing was wrong. They show the length that Jim Gatto would go
25 to to hide and conceal the payments, and that's very, very

Iahdgat3

Summation - Mr. Solowiejczyk

1 important evidence that I am going to talk to you about in more
2 detail later.

3 And, ladies and gentlemen, you've also seen the wire
4 transfer record from Adidas in the amount of \$50,000 on
5 October 21, 2016, just a few days before Gassnola made the
6 withdrawal of cash to give to Nicole Player, Billy Preston's
7 mother.

8 And all of this, that November 1st payment, once
9 again, just like the Dennis Smith payment, it comes right
10 before a very critical juncture, a very critical decision. And
11 what decision does Billy Preston make? Well, on November 9,
12 2016, he commits to the University of Kansas. And that's no
13 coincidence either, ladies and gentlemen.

14 Ladies and gentlemen, we also showed you the other
15 phony invoices that were used in connection with the payments
16 to Preston's mother. Again, tournament activation fees in the
17 amounts of \$70,000, which were fake on their face and Jim Gatto
18 knew it. And you also saw, as Mr. Gassnola told you, when it
19 came to the last few payments, he got what he described as
20 lazy, and he sent a straight wire transfer to Billy Preston's
21 mother. And you saw evidence of that as well during this
22 trial.

23 So if you take all of that evidence together, ladies
24 and gentlemen, there can be no question that TJ Gassnola and
25 Jim Gatto were making payments to the mother of Billy Preston.

Iahdgat3

Summation - Mr. Solowiejczyk

1 And how else do you know that Gatto and Gassnola made
2 these payments to Billy Preston, his family? Well, remember
3 what Brian Bowen Senior told you. He told you that Dawkins
4 used the payments that Gatto had agreed to make to Preston to
5 drive up the amount that Gatto and Code were going to have to
6 pay to get Bowen Senior to commit to Louisville.

7 If we could just bring up that testimony, Ms. Lee.

8 He told you, specifically, that the number started
9 around 60 or 80 and then it rose to a hundred. And the reason
10 why? There was a player kind of similar to my son, I guess
11 that went to an Adidas school, Kansas, Billy Preston, and he
12 had gotten \$100,000.

13 So, that's another reason you know that this payment
14 happened.

15 And, ladies and gentlemen, you also heard about --
16 from TJ Gassnola about the player named Silvio De Sousa and
17 payments to his guardian to get him to commit to the University
18 of Kansas. And you know that Gassnola and Gatto were planning
19 to make this payment before the charges in this case came to
20 light. TJ Gassnola told you about it when he testified. But
21 you also heard Jim Gatto and TJ Gassnola talk about that
22 payment in a wiretap recording, Government Exhibit 2. And you
23 heard Gassnola describing to Gatto exactly what he needed. He
24 told him: "I gotta send this guy another 20 grand out on
25 Wednesday because I gotta get him out from under this Under

Iahdgat3

Summation - Mr. Solowiejczyk

1 Armour deal, the deal he's got with this guy who was taking
2 care of him. He wants his money bank now because the kid
3 didn't go to Maryland. So I got to stay on top of that." You
4 heard that call between Gassnola and Gatto.

5 In that same call, you heard Gassnola tell Gatto about
6 accounting for what he referred to as the "underground stuff."
7 Jim Gatto knew exactly what that meant. The underground stuff
8 was these secret payments to the families of student-athletes
9 to get them to go to Adidas-sponsored schools.

10 And finally, ladies and gentlemen, you heard in
11 another wiretap call, on Jim Gatto's phone, that he was talking
12 about potentially making yet another payment to the family of
13 another student-athlete, Nassir Little, in connection with
14 seeking to have Nassir Little commit to the University of
15 Miami. Gatto and Code had spoken. Gatto -- Gatto knew that
16 they had another Louisville TJ situation except it's with Miami
17 this time. And you heard on the call Gatto ultimately did not
18 go forward with those payments. There was not budget for it,
19 among other things, as you heard.

20 But that's not the point. The point of these calls is
21 to show you how Gatto operated, and that time and time again he
22 made or contemplated making payments to the families of
23 student-athletes to get them to attend Adidas-sponsored
24 schools. That's what all the evidence in this case has shown
25 you.

Iahdgat3

Summation - Mr. Solowiejczyk

1 So, ladies and gentlemen, let me turn now to the
2 second reason why you know these defendants are guilty, and
3 that's the reason why the defendants made these payments.

4 Gatto and Code, as you've seen from the timeline of
5 events, they weren't just -- and Christian Dawkins as well,
6 they weren't just paying any parent of any player. They were
7 making payments to the families of specific players and for a
8 specific reason, players who they wanted to attend
9 Adidas-sponsored schools. And they made those payments at a
10 specific juncture, right around the time when the
11 student-athlete was deciding which college to attend. You saw
12 that from the timeline of events that we just reviewed. Time
13 and time again the payments were made shortly before these
14 student-athletes committed to attend Adidas-sponsored schools.

15 And Gatto and Code wanted these student-athletes to
16 commit to Adidas-sponsored schools because it was important to
17 them and their ultimate objectives to make sure that Adidas won
18 what the defendants called the shoe wars. They wanted high
19 school athletes playing on Adidas grassroots teams to go to
20 Adidas-sponsored schools and ultimately, when they turn pro, to
21 sign marketing deals with Adidas. Merl Code told you about
22 that himself during a meeting in Manhattan in June of 2017 that
23 we showed you a video of towards the beginning of this trial.

24 This is what Code said:

25 (Audio played)

Iahdgat3

Summation - Mr. Solowiejczyk

1 So, ladies and gentlemen, you know why Merl Code was
2 involved in making these payments. He said it himself. You
3 also know, ladies and gentlemen, why Christian Dawkins was
4 making these payments. He wanted to sign these
5 student-athletes, kids like Brian Bowen, to lucrative contracts
6 with his new sports management company when these players
7 turned pro. And he wanted to control these players from high
8 school to college and from college to the pros. And getting
9 them some money from Adidas to go to an Adidas-sponsored
10 school, that helped him in that longterm goal, because there
11 was no better way for Dawkins to ingratiate himself with these
12 families than to facilitate a \$100,000 payment to them. That's
13 why he turned to Merl Code and Jim Gatto when it came to the
14 Brian Bowen deal.

15 Now, ladies and gentlemen, you also know that the
16 defendants are guilty because there is not and cannot be any
17 dispute that the defendants were not allowed to be making these
18 payments. Indeed, defense counsel told you themselves during
19 their opening statements, there is no dispute that these
20 payments were all are flagrant NCAA rules violations.
21 Mr. Gatto's attorneys told you this. Mr. Code's attorneys told
22 you this. And Mr. Dawkins' attorneys also told you that.

23 But more significantly, ladies and gentlemen, there
24 also can be no dispute that the payments that these defendants
25 were involved in, they made the student-athletes, whose

Iahdgat3

Summation - Mr. Solowiejczyk

1 families got those payments, ineligible to compete. And that's
2 a very important point

3 As you heard from each of the compliance officers that
4 testified during this trial, the players were ineligible
5 regardless of whether they had knowledge of the payments to
6 their parents. You heard that from each and every one of the
7 compliance officers. John Carns, from Louisville, told you
8 that. He told you that it didn't matter if the student-athlete
9 had no knowledge of the payment because regardless of whether
10 the student-athlete or their family member accepts a benefit,
11 the student-athlete is still culpable for that violation.

12 Carrie Doyle, from NC State, told you that. She told
13 you that a payment to the parent of a student-athlete could
14 affect the student-athlete's eligibility irrespective of
15 whether the student-athlete knew of the payment.

16 Jeff Smith, from Kansas, told you the same thing when
17 it came to Billy Preston.

18 So, these payments, they made these players
19 ineligible.

20 Ladies and gentlemen, you also know these defendants
21 are guilty because you know, from all the evidence and all the
22 testimony, that these universities would not have issued
23 scholarships, athletic scholarships, to these student-athletes
24 had they known about this. Because these universities don't
25 issue athletic scholarships to student-athletes that aren't

Iahdgat3

Summation - Mr. Solowiejczyk

1 even eligible to compete. And all of the evidence that was
2 presented to you, ladies and gentlemen, it shows you that these
3 schools, these large public universities that were actually
4 paying for these scholarships, they cared a great deal about
5 this. These universities cared enough that they employed teams
6 of professional compliance officers whose job it was to ensure
7 that the universities did not violate NCAA rules. And it was
8 their job to ensure that all the student-athletes that took to
9 court were actually eligible.

10 You saw that the universities had forms,
11 questionnaires, training sessions. They asked lots of
12 questions. And they had a right to expect honest answers,
13 ladies and gentlemen. There could be no reasonable doubt that
14 had these universities known of the payments, the secret
15 payments that these men made of tens of thousands of dollars,
16 the payments that render these student-athletes ineligible to
17 compete, these universities never would have issued these
18 athletic scholarships. Each and every university official who
19 testified during this trial told you that in no uncertain
20 terms.

21 John Carns, from the University of Louisville, told
22 you that. He told you that if he had known about these
23 payments to Bowen's father, he would not have -- they would not
24 have issued a scholarship, or they would have canceled any
25 scholarship that had been issued.

Iahdgat3

Summation - Mr. Solowiejczyk

1 The same is true for Carrie Doyle when it came to
2 Dennis Smith Senior. She told you that if they had found out
3 about these payments, they would have investigated the
4 information, and if it was true, they wouldn't have provided an
5 athletic scholarship to Dennis Smith Junior, or if he had
6 already gotten aid, they would have canceled that aid. And
7 Jeff Smith, from Kansas, he told you the same thing when it
8 came to Billy Preston.

9 And, ladies and gentlemen, I'm going to ask you at
10 multiple points during this summation to use your common sense,
11 and my colleague, Mr. Mark, asked you to do the same during his
12 opening. Use your common sense when it comes to this point.
13 You heard that these athletic scholarships are highly coveted.
14 Each university only was allowed to award 13 athletic
15 scholarships every year. So, why would a university waste a
16 scholarship on a student-athlete who wasn't even eligible to
17 compete? The answer is simple. They wouldn't.

18 Ladies and gentlemen, you also know these defendants
19 are guilty because you know that the information that was
20 provided to these universities, it was false. There can't be
21 any dispute about that either. And that was crucial. That was
22 the whole point of these defendants' scheme. To make their
23 scheme work, for the players to ever get on the court wearing
24 that Adidas Jersey, the defendants knew full well that these
25 universities had to be lied to, because each of these

Iahdgat3

Summation - Mr. Solowiejczyk

1 universities required their student-athletes to complete
2 numerous forms in which they represented that they were
3 eligible to compete. And when it comes to the student-athletes
4 we are talking about in this case, that simply wasn't true. It
5 wasn't true because of these defendants, because of the secret
6 payments that these defendants had made to the parents of these
7 players. Those payments made these players ineligible to
8 compete.

9 Every single student-athlete was required to complete
10 the same form. It was called the student-athlete statement,
11 and you saw it multiple times during the trial. And I'm just
12 going to put up Brian Bowen's form. But all the other
13 players -- Dennis Smith, Billy Preston -- they all filled out
14 the same form. And as you know, Brian Bowen signed this on
15 June 9th, just a couple of days after the dirty deal was
16 struck.

17 And I want to focus you in particular, ladies and
18 gentlemen, on the section of this document that's called the
19 "Statement Concerning Eligibility," which sort of speaks for
20 itself. The point of this part of the document is that the
21 player is certifying their eligibility.

22 And I want to take a moment, ladies and gentlemen, to
23 just walk you through this form in a little bit of detail, and
24 to remind you what the compliance officers, who are versed in
25 these topics and these forms and rely on them and have -- deal

Iahdgat3

Summation - Mr. Solowiejczyk

1 with these issues all the time, what they told you about the
2 meaning of these forms and what these forms meant to their
3 universities.

4 So, Carrie Doyle told you exactly what the athlete
5 certifies in this section of the student-athlete statement.
6 The words on the form mean exactly what they say. In this
7 form, the student-athlete certifies that they're eligible for
8 competition. Ms. Doyle was asked what Dennis Smith was
9 representing in this section of the document, and she told you
10 that he is eligible for competition. Pretty basic point.

11 And you know, ladies and gentlemen, when these
12 student-athletes certify that they were eligible, in reality
13 they weren't.

14 In the student-athlete statement, the student-athlete
15 also certified that all information provided to the NCAA, the
16 NCAA Eligibility Center and the institution's admissions office
17 is accurate and valid, including ACT or SAT scores, high school
18 attendance, completion of course work and high school grades,
19 as well as your amateur status. And John Carns, from
20 Louisville, explained to you what this section of the form
21 meant. He told you that the NCAA Eligibility Center, he told
22 you about that during his testimony, and that the purpose of
23 the NCAA Eligibility Center was to make an initial
24 determination if student-athletes were eligible. That was the
25 point of the NCAA Eligibility Center.

Iahdgat3

Summation - Mr. Solowiejczyk

1 And he told you that the representation about amateur
2 status, it's what all these witnesses have been talking about
3 all the trial. A very basic concept. That when you're an
4 amateur athlete, you can't get paid to play and neither can
5 your parents.

6 And turning to the next portion of this form, just a
7 few lines down, the student-athlete also represents on the form
8 that they've reported to the director of athletics, or his or
9 her designee of your institution, any violations of NCAA
10 regulations involving you and your institution. Well, ladies
11 and gentlemen, that wasn't true, either, when it came to these
12 student-athletes, because all of them had been involved in a
13 violation of NCAA rules due to the fact their parents took
14 money and none of them had reported any such violations at the
15 time they signed the form. That is yet another statement in
16 this form that is not true

17 And let me direct you finally to the statement at the
18 bottom of the form which tells the player that they are
19 affirming that they understand that if they sign this statement
20 falsely or erroneously, they violate NCAA legislation on
21 ethical conduct and can further jeopardize their eligibility.

22 Ms. Doyle, who, as she testified, had worked at the
23 NCAA for years and had worked there as a compliance officer for
24 years after that told you about the significance of this. She
25 told you that it didn't matter whether the student-athletes

Iahdgat3

Summation - Mr. Solowiejczyk

1 knew the form was false at the time they completed it. It
2 doesn't matter. Providing false information on this form,
3 that's yet another separate violation and that can also
4 jeopardize your eligibility. So this section of this
5 student-athlete statement, the point is it contains multiple
6 statements that are demonstrably false. And the reason the
7 information provided on the forms were demonstrably false is
8 because of these defendants and their secret payments.

9 Now you also heard, and you saw, that these
10 universities require the student-athletes to complete other
11 forms in which they made additional representations about their
12 eligibility, in compliance with NCAA rules. I am just going to
13 go through a few of them. I am not going to try to put you to
14 sleep with these forms.

15 But if you take a look at the Financial Aid Agreement,
16 this was the one signed by Brian Bowen. In it, he indicated
17 that he understood that his scholarship could be immediately
18 reduced or canceled at any time if he rendered himself
19 ineligible for intercollegiate competition. And John Carns,
20 the compliance officer from Louisville, told you exactly what
21 could cause him to be rendered ineligible from intercollegiate
22 competition -- not meeting NCAA amateurism or academic
23 requirements, not being admissible to the institution.

24 You saw that NC State had numerous forms above and
25 beyond the Financial Aid Agreement and the student-athlete

Iahdgat3

Summation - Mr. Solowiejczyk

1 statement that Dennis Smith Junior completed, and those forms
2 were also filled with information that was false because of the
3 payments that Jim Gatto was involved in. And this form says it
4 itself. He represented that he had not been involved in a
5 possible violation of NCAA rules. Obviously, ladies and
6 gentlemen, he had been because his father had taken money.
7 That was because of Jim Gatto.

8 And, finally, there were the Kansas forms, and they
9 also had a Financial Aid Agreement that contained similar
10 representations that Billy Preston made in connection with his
11 getting a scholarship at Kansas.

12 And, ladies and gentlemen, there can be no serious
13 dispute that the universities relied on the answers that were
14 provided on these forms. Every single compliance officer told
15 you the same exact thing: If these payments had been disclosed
16 on the forms, the universities never would have issued the
17 scholarships.

18 Ladies and gentlemen, let me say one other word about
19 these forms, briefly. To be clear, the defendants did not
20 themselves make the misrepresentations to the universities that
21 are on these forms. They didn't themselves complete the forms.
22 That's obvious. But that isn't the question. The question,
23 ladies and gentlemen, is whether the defendants willfully
24 caused false certifications to be made. And, ladies and
25 gentlemen, of course they did. Because they knew these forms

Iahdgat3

Summation - Mr. Solowiejczyk

1 were going to be completed by the student-athletes. They knew
2 the universities were going to ask these questions regarding
3 eligibility, because every university does, and by their
4 actions, by their payments, they caused the answers to those
5 questions on those forms to be false. In short, they caused
6 false representations to be made to the universities.

7 And, ladies and gentlemen, the defendants of course
8 knew that the student-athletes and their parents would provide
9 false information. And you don't have to guess as to this
10 point, because you heard, for example, that when the University
11 of Kansas started investigating Billy Preston's eligibility and
12 certain payments that involved TJ Gassnola to the mother of
13 Billy Preston, Nicole Player, you heard exactly what Nicole
14 Player did and you saw it in the text messages, as well. She
15 what Jim Gatto and TJ Gassnola expected she would do. She lied
16 about those payments. And as you saw from the text message
17 exchange between Ms. Player and her son, she instructed her son
18 to lie as well. She told him: "you don't know, you don't
19 know. I don't care what they say to you. You don't know."
20 And Billy Preston responded, "Got you."

21 Ladies and gentlemen, you also know that the
22 defendants are guilty because you know that the defendants'
23 conduct caused the universities harm. The universities were
24 harmed in two distinct ways. First, they were deprived of
25 something of value, namely, the money used to fund these

Iahdgat3

Summation - Mr. Solowiejczyk

1 athletic scholarships. The scholarship that Louisville issued
2 to Brian Bowen, for example, consisted of approximately \$40,000
3 in aid. That's actual money that -- that's actual money that
4 went out the door. This is Bowen attended summer school. He
5 ate food. He lived in a dorm. Real costs the University of
6 Louisville bore under the false impression that Bowen was
7 eligible to receive an athletic scholarship when he wasn't.
8 The same is true for Silvio De Sousa, Dennis Smith and Billy
9 Preston.

10 But there's a second kind of harm that these
11 defendants exposed these universities to as well. Because as I
12 expect Judge Kaplan will instruct you, a victim can be deprived
13 of money or property when it is deprived of the ability to make
14 an informed economic decision about what to do with its assets
15 in a way that could have caused or did cause tangible economic
16 harm to the universities.

17 And Judge Kaplan is going to instruct you on the law,
18 and his instructions govern and you should listen carefully to
19 those instructions.

20 But, ladies and gentlemen, you know that's exactly
21 what happened here. Because as you heard, issuing a
22 scholarship to an ineligible player, allowing an ineligible
23 player to compete for the school, it exposed the universities
24 to the very real risk of fines and other penalties that could
25 be imposed by the NCAA. You heard about this from the

Iahdgat3

Summation - Mr. Solowiejczyk

1 compliance officers who testified. Carrie Doyle, from NC
2 State, told you all about the types of penalties that could be
3 imposed. There could be financial fines, recruiting
4 restrictions, scholarship reductions, post-season bans. They
5 can be forced to forfeit games and vacate records. And if a
6 student participated while ineligible during an NCAA
7 championship post-season, the institution might be required to
8 return revenue that they had received from the NCAA in
9 connection with that NCAA champion play. So, these penalties
10 aren't hypothetical.

11 And as you heard through a stipulation that all of the
12 parties agreed to, a rogue employee at the University of
13 Louisville engaged in rules violations back in 2010 through
14 2014. What was the result of that? Because Louisville had
15 played athletes who turned out to be ineligible, Louisville was
16 stripped of its 2013 national championship and it was forced to
17 forfeit approximately \$500,000, and those are among other
18 penalties that were imposed.

19 And you also heard that if a school is already on
20 probation at the time another violation occurs, like Louisville
21 was, that's an aggravating factor that can mean even more steep
22 penalties for the school. Carrie Doyle explained that to you
23 as well during her testimony. She told you about how being on
24 probation could be an aggravating factor for the NCAA

25 So that's a long way of saying that this is why the

Iahdgat3

Summation - Mr. Solowiejczyk

1 universities cared about this, ladies and gentlemen. They
2 cared because they had no choice but to comply with these
3 rules. They could not and would not issue a scholarship to an
4 ineligible athlete like Brian Bowen because they didn't want to
5 run the risks of being exposed to these kinds of harms.

6 Now, ladies and gentlemen, you also know that the
7 defendants are guilty because you know that the defendants knew
8 all of this, everything that I just went through. They knew
9 these payments weren't allowed. Dawkins and Code told you that
10 themselves in recorded telephone calls and in recorded meetings
11 that you heard. Christian Dawkins said it very simply.

12 (Audio played)

13 And, ladies and gentlemen, you also know that
14 Christian Dawkins and Merl Code, as well as Jim Gatto, men who
15 were steeped in the world of college basketball, they knew that
16 these universities had professional compliance departments, and
17 what they were trying to do is get around those people. You
18 actually heard Mr. Code and Mr. Dawkins talk about this during
19 a recorded meeting in New York. Merl Code talks about how
20 people can start asking questions, you know, folks, you know,
21 compliance officers at the schools. I mean, I was getting
22 calls when he -- Christian Dawkins -- showed up at Clemson, I
23 was getting calls. Why is he here? They were calling to me.
24 I guess he's down there recruiting. I don't know.

25 So, it's no secret to these defendants that there were

Iahdgat3

Summation - Mr. Solowiejczyk

1 these compliance officials at these universities whose job it
2 is to ensure that these universities comply with NCAA rules.
3 Everybody knows that in the world of college basketball.

4 And the defendant also knew that if the payments were
5 discovered, the student-athletes would be deemed ineligible and
6 they would never get the scholarship. And the defendants,
7 ladies and gentlemen, they knew that the student-athletes would
8 have to complete and submit paperwork to the universities in
9 order to get that athletic scholarship. Of course they knew
10 the answers would be false; I've explained to you why. And
11 they knew false answers had to be provided because if they
12 weren't, the entire scheme would go up in smoke if these
13 payments were disclosed. The student-athlete would be deemed
14 ineligible. They wouldn't play in college. And as you heard,
15 that would greatly diminish their ability to ultimately get to
16 the pros.

17 And you know that as well from the defendants' own
18 words. Just going back to some of the text messages I showed
19 you a little bit earlier about Brian Bowen's commitment, when
20 Dawkins tells Merl Code that Bowen has decided to commit to
21 Louisville, what are the next words out of Dawkins' mouth?
22 What's the obvious next step that has to happen? "just need to
23 get everything lined up with Gatto and we can get scholarship
24 papers signed." "Scholarship papers signed." Because
25 everybody knows that that's the next thing you have to do if

Iahdgat3

Summation - Mr. Solowiejczyk

1 you're committing to a university. These defendants knew that.

2 And Merl Code responded that he understood the same.
3 "We need to get the letter of intent signed, not just the
4 scholarship papers."

5 So these defendants knew very well -- you can see it
6 in black and white -- that Brian Bowen would be submitting
7 paperwork to get the scholarship, and of course they knew the
8 information regarding his eligibility would be false.

9 You also know that the defendants knew about the risks
10 that their conduct imposed upon the universities. They were
11 steeped in and knew an awful lot about the world of college
12 basketball, in grassroots basketball; that's become clear
13 during this trial from all the calls you heard and from all of
14 the testimony

15 And anyone who worked in college basketball knew that
16 payments of tens of thousands of dollars to the parents of
17 student-athletes in connection with their children attending
18 Adidas-sponsored schools could result in serious trouble,
19 serious problems for the universities.

20 And, ladies and gentlemen, there's been very little
21 evidence that the universities wanted to take on any of those
22 risks. To the contrary, every university witness told you
23 exactly the opposite, that they had no desire to take on
24 players who were ineligible and could lead to penalties for the
25 universities.

Iahdgat3

Summation - Mr. Solowiejczyk

1 And TJ Gassnola, another member of the defendant's
2 conspiracy, he told you that himself. He was a consultant for
3 Adidas, just like Merl Code, and he knew that the secret
4 payments that he and Jim Gatto were funneling from Adidas to
5 Billy Preston's mother could spell big trouble for the
6 University of Kansas if those payments ever came out. He knew
7 that NCAA sanctions could be imposed. He told you that himself
8 when he testified. He was asked, "Would did you expect could
9 happen if these payments weren't concealed well?"

10 "They would lose their eligibility, people would lose
11 jobs, and Kansas could have sanctions laid on them from the
12 NCAA."

13 And given the testimony you heard from the compliance
14 officers, ladies and gentlemen, that makes good sense, because
15 if the payments were discovered, there can't be any real
16 dispute that these universities were exposed to the risk of
17 serious harm. The defendants knew that at the time they made
18 these payments.

19 so, ladies and gentlemen, I now -- I want to turn to
20 what is a core issue in this case. Did the defendants, in
21 making these secret payments, and knowing the universities
22 would be misled and knowing the universities would issue
23 scholarships based on false and misleading information, did
24 they do all of that with the intention of defrauding the
25 universities? Of course they did. I expect Judge Kaplan will

Iahdgat3

Summation - Mr. Solowiejczyk

1 tell you that a person acts with a specific intent to defraud
2 when he acts with the intent to deceive and for the purpose of
3 depriving the relevant university of something of value.

4 Now, ladies and gentlemen, you know the defendants
5 intended to defraud. You know that in two ways. First, they
6 deprived the universities of the value of the scholarship, and,
7 as we discussed, tens of thousands of dollars went out the
8 door. And, second, they also deprived them of the ability to
9 make an informed economic decision about what to do with their
10 money or their property, that is, who to award scholarships to
11 in a way that could have caused or did cause tangible economic
12 harm to them.

13 Ladies and gentlemen, when you consider all of the
14 evidence in this case and you apply the law to that evidence,
15 there is only one logical conclusion to be drawn -- that the
16 defendants intended to defraud the universities.

17 So, how do you know that? You know that because it
18 was the entire point of the defendants' scheme. They had to
19 hide and conceal these payments from the universities, from the
20 NCAA, and from the outside world. Because the defendants knew
21 that if the universities found out about these secret payments,
22 their whole plan was going to be ruined. Kids wouldn't be able
23 to play in college, wouldn't wear the Adidas brand on national
24 TV. It would be far more difficult for them to ever make the
25 pros and sign those lucrative contracts with Jim Gatto and Merl

Iahdgat3

Summation - Mr. Solowiejczyk

1 Code of Adidas. You heard that from Munish Sood and also the
2 signed lucrative contract with Christian Dawkins' management
3 company.

4 You heard that from Munish Sood, TJ Gassnola and from
5 Brian Bowen Senior, how important it was for these kids to play
6 in college if they were ever going to make it to the NBA, where
7 the defendants really hoped to cash in on them.

8 And, ladies and gentlemen, I'm going to walk you
9 through the many different ways that these defendants sought to
10 conceal what they were doing from the universities. As you are
11 evaluating whether the defendants had the intent to defraud
12 these universities, stay focused on this evidence.

13 (Continued on next page)

14
15
16
17
18
19
20
21
22
23
24
25

IAH8GAT4

Summation - Mr. Solowiejczyk

1 MR. SOLOWIEJCZYK: Because the lengths these
2 defendants were willing to go to, to hide what they were doing,
3 it tells you an awful lot about their intentions. And the fact
4 that these defendants tried to conceal what they were doing
5 from the outside world tells you something else that is
6 important. It tells you that they knew what they were doing
7 was wrong. Because when people know that what they are doing
8 is wrong, they try to hide it. And that's exactly what they
9 these defendants did.

10 So what did the defendants do to conceal their scheme
11 to make payments to the families of student-athletes? Well,
12 they paid in cash so the payments would be harder to trace.
13 They used phony invoices to paper over the payments. They
14 routed the money through multiple bank accounts to further
15 conceal the payments. And they took other steps to conceal
16 too, which included, among other things, using secret second
17 phones -- bat phones.

18 Let's talk about each of those one at a time.

19 So as you saw during the trial, the defendants made
20 payments to the parents of student-athletes almost exclusively
21 in cash. Why? Because when cash is used, the payments can be
22 more easily concealed.

23 Merl Code told you this himself in his own words.
24 When he was asked by Jeff DeAngelo and Munish Sood about how
25 they recommended that they make the \$25,000 payment to Bowen

IAH8GAT4

Summation - Mr. Solowiejczyk

1 Senior, here is what he said.

2 He said, " I would suggest, I would suggest, for
3 cleanliness and lack of questions, I would always assume cash
4 is better. Right?"

5 "Cleanliness and lack of questions." In other words,
6 pay the money in cash so that it's clean and so no one can ask
7 any questions about it later.

8 Because Merl Code, Jim Gatto, and Christian Dawkins
9 knew very well, ladies and gentlemen, that they were not
10 allowed to be making payments to Bowen's dad to get his son to
11 go to Louisville. And they knew that for this scheme to
12 succeed, they absolutely had to conceal that payment in every
13 way that they could, and that included making the payments in
14 cash.

15 Ladies and gentlemen, you also know that the
16 defendants created and approved sham invoices. These sham
17 invoices were meant to conceal the true nature of these
18 payments. You have seen a number of these bogus invoices
19 already during this summation. Jim Gatto at Adidas approved
20 and pushed through invoice after invoice, for things like
21 tournament fees or travel expenses. He and the consultants who
22 worked for him, men like Merl Code and TJ Gassnola, worked to
23 create and approve bogus, phony invoices prepared for expenses
24 that were pure fiction. Totally invented expenses.

25 Let's take a look at an example. On June 5, right

IAH8GAT4

Summation - Mr. Solowiejczyk

1 around the time that the deal was struck to send Brian Bowen to
2 Louisville, Merl Code submitted a phony invoice to Jim Gatto
3 for \$25,000 from the Karolina Khaos that was supposedly for
4 travel team expenses.

5 But, ladies and gentlemen, you know what this payment
6 was really for. It wasn't for travel expenses. You heard that
7 from Ricky Robertson, and you also heard that in all the
8 wiretapped calls. It was the first \$25,000 that Gatto, Code
9 and Dawkins had promised to Bowen Senior to get his son to
10 commit to Louisville.

11 This is one of many phony invoices that you saw during
12 this trial, and you saw, among other things, a chart of all the
13 various invoices that had been approved when it came to the New
14 England Playaz, which totaled a very substantial amount of
15 money, ladies and gentlemen, over \$700,000 in invoices that
16 were approved.

17 The invoices that Jim Gatto was approving that had
18 fake expenses on them, and that he was pushing through, they
19 were to fund dirty payments, underground payments, to the
20 families of student-athletes in connection with their decision
21 to attend Adidas-sponsored schools.

22 And, ladies and gentlemen, you know that Merl Code and
23 Christian Dawkins were in on this too. They were active
24 participants in the plan to push through phony invoices at
25 Adidas to fund their underground payments. Merl Code explained

IAH8GAT4

Summation - Mr. Solowiejczyk

1 the whole thing to Dawkins in a wiretap call that you heard
2 during this trial.

3 Dawkins asked him, "Gatto wasn't put on the books, was
4 he?"

5 And Code said, "Yeah, I think he was. But I think he
6 was doing it as a payment. He's doing it as a payment to my
7 team, to my organization. So it's on the books, it's not on
8 the books as what it's actually for."

9 That says it all, ladies and gentlemen. Why the fake
10 invoices? Because Jim Gatto, Merl Code, and Christian Dawkins
11 knew that they had to conceal these payments from everyone, and
12 that included concealing it from the universities and from the
13 NCAA. And this scheme wouldn't have worked if they didn't
14 conceal it. So they also had to be sure that they concealed it
15 on the books of Adidas.

16 Gatto knew that he couldn't possibly have any record
17 of these payments on Adidas's books. He couldn't leave any
18 trace of the true purpose of these payments. Otherwise the
19 whole scheme was going to be foiled. More lying, more deceit,
20 more concealment by these defendants of what they were doing
21 because they knew what they were doing was wrong.

22 Ladies and gentlemen, you also heard about the
23 defendants' efforts to conceal these payments by routing money
24 through multiple accounts. Adidas did not simply write a check
25 to Brian Bowen Senior or send a wire directly to him. You know

IAH8GAT4

Summation - Mr. Solowiejczyk

1 that. And the reason the money was routed through multiple
2 bank accounts before it made its way to its actual intended
3 recipient is simple. The defendants wanted to make these
4 payments harder to trace. So if anyone ever came looking or
5 asking any questions, it would harder to tell where the money
6 was coming from and where it was going to.

7 So let's look at the first payment to Bowen Senior as
8 an example. What Gatto, Code, and Dawkins did was try to
9 conceal that payment by routing it through multiple bank
10 accounts. You saw this in the financial records and you heard
11 about it in the testimony of Ricky Robertson, who is the head
12 of the Karolina Khaos amateur basketball team, and he
13 controlled the Karolina Khaos bank account. And his account
14 was used to route payments to Brian Bowen unbeknownst to him.

15 So you saw that, first, there is a \$30,000 wire that
16 was sent into the Karolina Khaos account from Adidas. And that
17 was supposedly for some of these bogus expenses that we have
18 been talking about. And that was on August 1.

19 Then you saw that same day, Ricky Robertson cut a
20 check to Christian Dawkins in the amount of \$25,000, which he
21 labeled as consulting fees. And Mr. Robertson was asked why he
22 wrote consulting fees on this check. Because Merl Code asked
23 him to.

24 That was just another way these defendants were trying
25 to conceal what they were doing, by mislabeling these checks.

IAH8GAT4

Summation - Mr. Solowiejczyk

1 Because as you heard from Mr. Robertson, Christian Dawkins
2 never did any consulting work for the Karolina Khaos basketball
3 team.

4 And as you know, the plan was that Dawkins would
5 withdraw the funds from his bank account and give them in cash
6 to Brian Bowen. There were multiple steps to these payments,
7 they went through multiple accounts, and the reason for that
8 was simple. It was because these defendants were trying to
9 hide the fact of these payments, and they went to great lengths
10 to do that.

11 Ladies and gentlemen, you also heard about how Brian
12 Bowen Senior and Christian Dawkins used second phones to
13 communicate. When they were talking about these prohibited
14 payments, they often switched over to their secret phones
15 which, as Brian Bowen Senior told you, they called "bat
16 phones."

17 This is but one example. Bowen said to Dawkins, "Let
18 me use the other phone." Then he said, "I don't call from my
19 other phone. I answer it, but I don't F with this phone. I
20 don't trust this phone."

21 "All right. Hold on."

22 Then they switched over to their bat phones.

23 And Bowen told you why they were using bat phones when
24 he testified. And you know why, ladies and gentlemen. Why did
25 he use a bat phone to talk about the subjects of these

IAH8GAT4

Summation - Mr. Solowiejczyk

1 prohibited payments? Because, he told you, "it wasn't
2 connected to my name. I mean, if you're doing something wrong,
3 you don't want be connected to your name."

4 That's why Christian Dawkins had a second phone too.

5 And Dawkins and Bowen weren't the only ones with bat
6 phones. Merl Code referred to having his own bat phone, as you
7 saw in text message that he sent to Chris Rivers at Adidas. "I
8 am hitting you from the bat phone."

9 The defendants Christian Dawkins, Merl Code, they were
10 using bat phones for one reason, and one reason only. Because
11 they wanted to hide what they were doing from the outside
12 world. People who think that everything is on the up-and-up,
13 they don't have second and third phones, they are not switching
14 calls over from one phone to another. This is what people do
15 when they know what they are doing is wrong. And they wanted
16 to be sure that they didn't get caught. Because they knew they
17 weren't allowed to be making these payments. And they knew
18 that if these payments ever saw the light of day, this whole
19 scheme that they cooked up, it was foiled. The universities
20 would declare the players ineligible. No big profits for the
21 defendants.

22 Ladies and gentlemen, as if that weren't enough
23 evidence of the lengths these defendants were willing to go to
24 to conceal their wrongful conduct, there is more. Because you
25 heard the defendants in their own words, time and time again,

IAH8GAT4

Summation - Mr. Solowiejczyk

1 talk about their suspicion and their concerns. Because they
2 knew what they were doing was wrong, and they knew that only a
3 very small circle of trust can know about these secret payments
4 to the parents of student-athletes. A need-to-know basis.

5 So I am just going to walk through one or two examples
6 of that, ladies and gentlemen.

7 You know that Dawkins and Code began, as you heard in
8 the call, to have suspicions about Dawkins' new business
9 partners, Jeff DeAngelo and Jill Bailey, who, as you heard,
10 turned out to be undercover FBI agents. And you saw in one of
11 these calls, Code telling Dawkins, "You've got to be extra
12 cautious about who you're associating with. That's why I am on
13 this whole work. They ain't cutting me no checks for S. They
14 gonna pay you and you gonna pay me."

15 In that same call, Code advised Dawkins, "Like, you
16 and I need to protect ourselves, man. I'm saying this just as
17 a guy who's real skeptical about this S. You and I need to get
18 some background information on Jeff and his chick."

19 Why all these concerns about Jeff and Jill? Why all
20 these suspicions? They also talked in this call, as you may
21 recall, about hiring private investigators to look into them.
22 Why do Code and Dawkins need to know who they are dealing with?
23 Because they know these payments that they are engaged in, they
24 are not supposed to be doing it, and they know they need to be
25 extra careful. If Dawkins and Code were engaged in a business

IAH8GAT4

Summation - Mr. Solowiejczyk

1 venture that was totally on the up-and-up, would they be
2 talking about hiring private investigators and looking into
3 these people and being skeptical, and all the other things they
4 talked about in this call? No, they wouldn't, ladies and
5 gentlemen.

6 You also heard Dawkins talk about his concerns and his
7 efforts to hide what he was doing in yet another call. This is
8 a call with Munish Sood, and it occurred on the same day, a
9 little bit before Christian Dawkins was going to send an e-mail
10 to Jill Bailey, a new business partner, and Munish Sood. And
11 that e-mail, as you saw, contained the names of various players
12 and the amounts of money that Dawkins was planning to provide
13 to them or their families or handlers. And one of the players
14 discussed here is Brian Bowen. That's what this whole e-mail
15 is full of.

16 And you heard in a call between Dawkins and Sood that
17 Dawkins had second thoughts about putting any of this
18 information in writing in an e-mail to his new business
19 partner, Jill Bailey. Here is what Dawkins said to Munish Sood
20 before he sent an e-mail containing details of payments to
21 various players and their families.

22 (Audio played)

23 MR. SOLOWIEJCZYK: Dawkins says it himself, ladies and
24 gentlemen. He is worried about, if someone goes into Jill
25 Bailey's e-mail, they might discover the secret payments that

1 he has outlined in that e-mail. Why is he paranoid, as he puts
2 it? Because he knows the payments that he put in that e-mail,
3 payments to players and their families, including Brian Bowen's
4 father, they are not allowed, they are wrong, and he is
5 concerned about anybody from the outside world ever seeing that
6 e-mail. Because for the defendants' scheme to work, they have
7 got to keep these payments concealed from everyone.

8 So in light of all that evidence, ladies and
9 gentlemen, there can't really be any dispute about the lengths
10 that these defendants went to to hide and conceal what they
11 were doing. Who are the defendants concealing all this
12 information from? Well, they are certainly trying to conceal
13 these payments from the universities. Because if the
14 universities found out, then the student-athletes won't
15 continue to get a scholarship. You know that. The
16 universities can't find out for this scheme to work.

17 Were the defendants also trying to conceal what they
18 were doing from the NCAA as well? Of course they were.
19 Because for the scheme to work, the defendants had to conceal
20 what they were doing from both the NCAA and the universities.
21 In fact, it would make little sense if the defendants wanted to
22 hide their payments from the NCAA but had no problem with the
23 universities knowing about the payments. Because if the NCAA
24 found out about these payments, they would certainly inform the
25 universities, and that would spell the same outcome for these

1 defendants. Players would be declared ineligible and the
2 defendants' scheme would be over.

3 And, ladies and gentlemen, when we refer to
4 universities, we are talking about big public universities in
5 this case; universities with boards of directors, and
6 chancellors, and a professional compliance staff, whose sole
7 job it is to ensure that these universities don't run afoul of
8 NCAA rules violations or give out scholarships to ineligible
9 athletes. We are not just talking about a single coach on a
10 basketball team. Universities are obviously far bigger than
11 just a coach. Your common sense tells you that.

12 Now, ladies and gentlemen, during the defendants'
13 opening statements, and through their questioning, you have
14 heard two primary arguments. First, that the defendants
15 supposedly were doing this -- all these secrets payments and
16 everything else I have discussed -- to help, not harm the
17 universities. And, second, that they believed the coaches were
18 asking them to make these payments.

19 Now, ladies and gentlemen, I will remind you, of
20 course, that the defense has no burden in this case. The
21 government bears the entire burden of proof, and we embrace
22 that burden. But when the defense presents evidence to you,
23 makes arguments to you, you are entitled to, and you should,
24 scrutinize that evidence and those arguments, the same way that
25 you would scrutinize and analyze any other evidence and any

1 other arguments. You should use your common sense as well.
2 And when you do that, ladies and gentlemen, you will see that
3 the defendants' arguments don't make any sense and are at
4 bottom irrelevant.

5 So let's start by talking about this notion that by
6 making these secrets payments to the families of
7 student-athletes to get them to commit to Adidas-sponsored
8 schools the defendants were really just trying to help those
9 universities.

10 Ladies and gentlemen, respectfully, that doesn't make
11 sense. Sure, nobody disputes that universities want top-level
12 talent. They want to win games. But that doesn't mean that
13 the universities are willing to cheat and break the NCAA rules
14 to do so. That doesn't mean they want to assume the risks of
15 NCAA penalties just to get a top recruit.

16 And here is another important point. The mere fact
17 that if the defendants had gotten away with it, that if they
18 were never caught the schools might have won a few more
19 basketball games because of these top recruits, that's
20 irrelevant. Because by exposing these universities to the
21 risks of harm, risks the universities didn't want to take,
22 these defendants took this decision out of the hands of the
23 university where it belonged. And the defendants had no right
24 to do that.

25 Use your common sense when approaching this argument,

IAH8GAT4

Summation - Mr. Solowiejczyk

1 ladies and gentlemen. You don't help someone by hiding
2 information from them that they are entitled to know in
3 deciding what to do with their money. You don't help someone
4 by ensuring that they are provided with false information,
5 which is exactly what the defendants in this case did by making
6 these payments, and knowing full well the student-athletes
7 would seek athletic scholarships and would fill out forms that
8 contained false information.

9 You don't help someone by exposing them to all sorts
10 of risk of penalties and fines. That's what these defendants'
11 supposed help did as well. Thanks to these defendants, the
12 universities played ineligible players in contests, and as you
13 heard, that would likely lead to forfeiture of those contests
14 as well as a risk of a host of other significant NCAA
15 penalties, including fines and loss of revenue.

16 Does any of that sound like help, ladies and
17 gentlemen? No, it doesn't.

18 Here is the bottom line. This was not the defendants'
19 decision to make for the universities. It was the
20 universities' choice who to give scholarships to, and they were
21 entitled to rely on the accuracy of the information that they
22 were receiving. By making secret payments to the families of
23 student-athletes, taking steps to conceal those payments from
24 the universities, and ensuring that the forms submitted to the
25 universities would contain false statements, these defendants

IAH8GAT4

Summation - Mr. Solowiejczyk

1 took away from the universities their right to make informed
2 decisions with their money. That isn't help. It's fraud.

3 Ladies and gentlemen, let me also address the argument
4 that you heard defense counsel make in opening statements that
5 the coaches at these universities were asking the defendants to
6 make the payments to the families of these student-athletes,
7 that the coaches asked them to make these payments so that the
8 basketball teams could recruit these athletes to play for their
9 teams.

10 Let me say a few things about why that argument is at
11 the end of the day irrelevant. First, there is very little
12 evidence to support the defendants' assertion that the coaches
13 were asking for each and every one of the payments with which
14 these defendants are charged.

15 Let's talk about the Brian Bowen scheme for a minute.
16 Christian Dawkins told you himself, in wiretapped calls with TJ
17 Gassnola, who knew the details of these payments. He didn't
18 know anybody was listening when he had this conversation. And
19 it was a very close circle of people that knew about these
20 payments. According to Christian Dawkins, when he didn't think
21 that anyone was listening, that circle didn't include Assistant
22 Coach Kenny Johnson.

23 Gassnola said to Dawkins -- as you recall, Gassnola
24 had heard from Brad Augustine, who was an AAU coach of another
25 team, that he knew about the \$100,000 payment to Bowen Senior,

IAH8GAT4

Summation - Mr. Solowiejczyk

1 and he was angry about that and he called Dawkins.

2 And Gassnola said: "This guy ain't lying because
3 there's only four in the world that went down. So five. Me,
4 you -- so TJ Gassnola, Christian Dawkins, Merl Code, Jim Gatto,
5 and Kenny Johnson, the assistant coach at Louisville."

6 And how did Dawkins respond? "Whoa. Kenny didn't
7 even know. I didn't tell Kenny. The \$100,000 number was not
8 mentioned."

9 So the notion that Merl Code, Christian Dawkins or Jim
10 Gatto made these payments to Brian Bowen Senior because they
11 were asked to do it by the coaching staff, it's undercut by the
12 evidence. It's undercut by Christian Dawkins's own words.

13 Indeed, the only coach you know for certain was
14 involved in these payments was Orlando Early, an assistant
15 coach at NC State. And you did hear from TJ Gassnola that he
16 was directly involved in the payment that went to Dennis
17 Smith's father.

18 But putting all of that aside, ladies and gentlemen,
19 here is what matters. You don't need to decide which coaches
20 knew and which coaches didn't. You don't need to decide which
21 coaches were asking for these payments and which coaches
22 weren't. At the end of the day, it's utterly irrelevant.
23 Because any coaches who were involved in any such payments, or
24 had knowledge of them and didn't report them, were not
25 authorized to do this. They were not acting on behalf of or in

1 the interests of their universities, period.

2 And the defendants knew that. When Merl Code and
3 Christian Dawkins did not think anybody was listening, they
4 told you exactly what they thought. That Rick Pitino might
5 have known something when it came to Brian Bowen, but that
6 Pitino had plausible deniability.

7 (Audio played)

8 MR. SOLOWIEJCZYK: What does plausible deniability
9 mean? It means the defendants know that Rick Pitino was not
10 allowed to be involved in such a payment. And it means that
11 these defendants knew that Rick Pitino would not have the
12 authorization of his university if he asked for such a payment,
13 and that he would need a basis to deny that payment if it was
14 ever discovered. Which tells you everything you need to know,
15 ladies and gentlemen. These defendants didn't actually think
16 that, if Rick Pitino asked for such a payment, that he had the
17 authority from his university to do so, or that he was acting
18 purely for the interest of his school. That's why Rick Pitino,
19 as they said, needed plausible deniability.

20 And you know what you do have evidence of, ladies and
21 gentlemen, loads and loads of evidence? Is that any coach who
22 participated in or encouraged any such payments was acting
23 expressly contrary to the wishes of the university that
24 employed him, contrary to the express policies of those
25 universities, and contrary to the terms of their employment

1 agreements with these universities.

2 You saw many employment agreements during this trial.
3 This is just one, Rick Pitino's employment agreement. And it
4 makes clear that he has duties to know, recognize, and comply
5 with, among other things, the rules of the NCAA. And he has a
6 duty to diligently supervise compliance of assistant coaches
7 and any other employees for which Pitino is administratively
8 responsible for. That includes making sure they don't violate
9 NCAA rules.

10 And you heard that there can be consequences if an
11 NCAA rules violation happens under these coaches' watch, or if
12 they are involved in a violation. Indeed, you heard time and
13 time again, from each and every compliance officer that
14 testified, that any coach who engaged in making these sorts of
15 secret payments to the parents of student-athletes, they would
16 be subject to immediate termination.

17 And TJ Gassnola, he told you that he was well aware of
18 this as well at the time that he and Jim Gatto were making
19 their underground payments.

20 Why didn't TJ Gassnola tell the compliance staff at NC
21 State about the payments he and Gatto were involved in with
22 Assistant Coach Orlando Early? Why? Because that wouldn't
23 have helped anybody. It would hurt Dennis Smith and it would
24 have hurt the coaching staff. And then he was asked how he
25 expected it would hurt Dennis Smith and hurt the coaching

IAH8GAT4

Summation - Mr. Solowiejczyk

1 staff. "The coaches would have got fired and Dennis would have
2 been deemed ineligible. He would have never played there."

3 Because everybody working in the world of college
4 basketball knows that any coaches asking for payments like
5 these wouldn't be acting on behalf of their universities.
6 Quite the opposite. They would be acting contrary to their
7 university's own interests.

8 Of course the defendants who worked in the industry
9 knew this. Of course they knew that any coaches asking them to
10 make any such payments were not acting with the blessing of the
11 universities. So at the end of the day this whole notion that
12 the coaches were asking for it, even if it was true, it's
13 irrelevant.

14 Now, ladies and gentlemen, for all of the conduct that
15 I just described the defendants are charged with three crimes.

16 In Count One, all three defendants are charged with
17 conspiracy to commit wire fraud. I expect you to hear from
18 Judge Kaplan that a conspiracy is an agreement.

19 Ladies and gentlemen, if you find that the defendants
20 agreed to defraud the University of Louisville through their
21 agreement to pay \$100,000 to the father of Brian Bowen, you can
22 stop there. They are guilty as to Count One.

23 In Count Two, all three defendants are charged with
24 the substantive crime of wire fraud involving the scheme to
25 defraud the University of Louisville in connection with the

IAH8GAT4

Summation - Mr. Haney

1 \$100,000 payment to Brian Bowen's father.

2 If you find each defendant participated in that scheme
3 with the intent to defraud the University of Louisville, then
4 defendants are guilty of that count as well.

5 And in Count Three, solely Jim Gatto is charged with
6 the substantive crime of wire fraud involving a scheme to
7 defraud the University of Kansas. This is in connection with
8 the payments that were made to Billy Preston's mother to get
9 Billy Preston to commit to the University of Kansas.

10 If you find that Jim Gatto participated in that scheme
11 with the intent to defraud the University of Kansas, then he is
12 guilty as to that count.

13 Ladies and gentlemen, I am about to sit down.

14 At the beginning of this case, we asked you to use
15 your common sense in evaluating the evidence, and I am going to
16 ask you to do that again. Because if you use your common
17 sense, you will reach the only verdict that is consistent with
18 the law and with the evidence -- that the defendants are
19 guilty.

20 Thank you.

21 We will take a 15-minute break and then we will hear
22 from Mr. Haney.

23 (Jury exits courtroom)

24 (Recess)

25 THE COURT: What is the defendants' time allocation?

IAH8GAT4

Summation - Mr. Haney

1 MR. HANEY: I will be one hour.

2 MR. MOORE: We are not 100 percent sure how long
3 Mr. Code's closing argument is going to go, but it will
4 probably be slightly less than an hour.

5 THE COURT: So then an hour and whatever for Mr.
6 Schachter.

7 MR. MOORE: Yes, sir.

8 (Jury present)

9 THE COURT: The jurors and the defendants all are
10 present.

11 We will now hear from Mr. Haney on behalf of Mr.
12 Dawkins.

13 MR. HANEY: Thank you, your Honor.

14 Good afternoon. Before I begin, on behalf of my
15 client, Christian Dawkins, he and myself deeply thank you for
16 all your patience and your attentiveness and the incredible
17 sacrifice that you all made to leave your lives to be here for
18 the period of time that you were here.

19 As I watched you all over the last several weeks
20 dutifully file in, just as you did now, one by one to take your
21 respective seats in the jury box, it struck me really, for the
22 first time in maybe 20 years of practicing law, the extent of
23 sacrifice you made by giving Christian Dawkins his day in
24 court.

25 Now, I totally would be remiss if I did not comment

1 and compliment Mr. Diskant, Mr. Mark, Mr. Solowiejczyk, and Ms.
2 Flodr -- they are very talented team of young lawyers who have
3 sat there in the front row -- for a fine argument today. Now,
4 I don't agree, obviously, with what they said, but I listened
5 intently, and I hope you do the same of me.

6 I thank his Honor for his patience, as it was tried,
7 as you saw, at times during the course of the trial, and for
8 accommodating a couple of out-of-town guys, like me and Mr.
9 Moore, as we navigated our way through the Big Apple.

10 Ladies and gentlemen, for Christian Dawkins, this was
11 the fight for his life, like no other, to clear his name, fight
12 for his liberty, fight for his freedom. And he is still in
13 that fight right now.

14 Despite the mistakes and missteps he has made, those
15 mistakes, those missteps, and the people that you saw in this
16 courtroom who testified against him that he met along the way
17 at such a young age, I submit to you never warranted him with
18 being charged with these very serious federal crimes.

19 Now, hopefully together these discussions that we are
20 having are going to be helpful to you in trying to arrive at a
21 decision in this case, where you don't compromise, you don't
22 sacrifice your beliefs, and where you don't betray your own
23 individual conscience, but instead, you do what you believe,
24 based on the evidence in this case, is the right thing to do.

25 Now, you, ladies and gentlemen, are empowered to

1 determine, based on your assessment of the evidence, not the
2 argument of the lawyers, of what that right thing is. It's a
3 great and mighty privilege, a responsibility, and I submit to
4 you perhaps even a burden, to hold a 25-year-old man's future
5 in your hands, to be the purveyors of justice, and ultimately
6 make the decision that you will soon make of whether or not
7 Christian is guilty or not guilty.

8 So now the defendant, Christian Dawkins, is afforded
9 his opportunity to argue the case, if you will, but I am not
10 going to argue with you. I am going to just try and discuss
11 with you the reasonable inferences, which I submit can be drawn
12 from the evidence in this case, and try to make sense of these
13 charges before the court.

14 Ultimately, it will be what you decide to be the facts
15 that is what is going to be important, and all of us can live
16 with that, and we will, because you took an oath. And we are
17 mindful of that oath that you took as jurors, and we trust that
18 you as jurors will fulfill that oath and keep the promises you
19 made and follow the law.

20 Simply put, you are fair people. We are confident you
21 will arrive at a fair and just outcome for both sides -- the
22 government and the defense -- because that's what fair people
23 do.

24 Now, after several, admittedly, tedious moments during
25 the course of this trial, you are now empowered to administer

1 justice. No more lawyer arguments. No more secret trips to
2 the sidebar. You are now empowered to ensure that this great
3 system that we have works. This is your time, ladies and
4 gentlemen, the ball is now in your court, and I submit that you
5 have this rare opportunity to be participants in this
6 administration of justice. For, as you will see, the
7 government took this case of NCAA rule-breaking, and now you
8 must decide if NCAA rule-breaking is a federal crime.

9 The judge will instruct you on the law.

10 THE COURT: Sustained. That is most assuredly not the
11 jury's job.

12 MR. HANEY: Thank you, your Honor.

13 The judge will instruct you on the law. That is not
14 my job. It's only my job to walk you through the evidence,
15 which we are about to do. And it is your job to decide if my
16 client violated those laws. And I submit to you that the
17 government has failed to prove that beyond a reasonable doubt.

18 So let's revisit the evidence in this case and take a
19 journey, if you will. Remember in my opening statement I
20 talked about a journey for justice, that you would go on a
21 trip. And it wouldn't be a straight line path; it would a path
22 that would take different routes. It would meander a bit. You
23 might even hit a dead-end road every now and then and have to
24 come back. And I submit to you that trip that you took left
25 you empty of any sensible explanation for the theory in this

1 case that the universities were somehow harmed, and that my
2 client intended to harm them.

3 I submit that at the end of this trip it will be
4 evident that the government's theory is flawed, and the
5 government has failed to meet that burden of proof, and that
6 Christian Dawkins will not be guilty of the crime of wire fraud
7 and conspiracy.

8 So let me start this journey for justice by discussing
9 the charges against Christian Dawkins.

10 Now, after all the defendants have had a chance to get
11 up here and speak to you tomorrow, the government will get an
12 opportunity to address you again one last time, and then Judge
13 Kaplan is going to instruct you on the charges brought by the
14 government in the case. So let's look at the charges.

15 Now, you will hear that the government is bringing
16 three different counts in this case. It is important to
17 remember that my client, Christian Dawkins, is only being
18 charged with Count One and Count Two.

19 Count One, conspiracy to commit wire fraud, which
20 includes the universities Louisville, Kansas, Miami, and North
21 Carolina State.

22 Count Two, substantive crime of wire fraud with
23 Louisville.

24 Now, the judge will instruct you on the law. But I
25 will tell you that in order to find my client, Christian

1 Dawkins, guilty of Count Two, the government must prove beyond
2 a reasonable doubt that Christian Dawkins acted with a criminal
3 intent, an intent to defraud.

4 I submit that it is the burden the government will not
5 be able to meet in this case to defraud Louisville. That's
6 Count Two.

7 So what is Count One? Count One is the conspiracy to
8 commit wire fraud. Again, Louisville, Kansas, Miami, and North
9 Carolina State. These are the four schools that the government
10 put forth to you as the victims in this case.

11 Now, I want to try to make sense with this for a
12 minute. I really want you to think on this. Where during the
13 last several weeks did you ever hear my client's name
14 associated with anything that occurred at either North Carolina
15 State or the University of Kansas?

16 Ladies and gentlemen, you didn't. Because there
17 wasn't a suggestion from the government that Christian Dawkins
18 was involved in anything that had to do with North Carolina
19 State or Kansas.

20 Now, we have heard testimony from witnesses Carrie
21 Doyle and Jeff Smith, in the compliance departments of both
22 North Carolina State University and University of Kansas, both
23 who detailed a variety of rules improprieties associated with
24 Dennis Smith, Jr. at North Carolina State, and the same type of
25 NCAA rules violations with players Billy Preston and Silvio De

IAH8GAT4

Summation - Mr. Haney

1 Sousa at the University of Kansas. But, ladies and gentlemen,
2 ask yourselves when you deliberate, did you ever hear the name
3 Christian Dawkins come out of the university witnesses' mouths
4 one single time?

5 You heard the testimony of former Adidas consultant TJ
6 Gassnola, who detailed the facts and circumstances of cash
7 drops to the parents and guardians of those players at North
8 Carolina State and Kansas, more specifically, Dennis Smith, Jr.
9 at North Carolina and Billy Preston and Silvio De Sousa at
10 Kansas. Ask yourselves again, did you ever hear the name
11 Christian Dawkins come out of the mouth of TJ Gassnola in
12 connection with those two schools, Kansas and North Carolina
13 State? Was Christian Dawkins's name ever mentioned one time as
14 an actor or a participant in any scheme to the parents or
15 guardians of any of the players at either North Carolina State
16 or the University of Kansas? No, you didn't.

17 If you have any doubt, I will tell you what. Don't
18 take my word for it. You can prove me wrong. When you go back
19 into the deliberation room, after what we have all said, you
20 will have the ability to request the transcript of what you
21 heard in court over the past several weeks. You can ask for
22 the transcript of the North Carolina State and the Kansas
23 compliance staff, and the testimony of TJ Gassnola, and review
24 it for yourself. And I submit to you -- and hold me to what I
25 am going to say -- you won't find one shred of evidence

1 connecting Christian Dawkins to Kansas or North Carolina State.
2 Nothing.

3 It goes further than the transcript. Was there a
4 single text message, wiretap, or an e-mail that ever made any
5 suggestion that my client, Christian Dawkins, was engaged in
6 some scheme to defraud North Carolina State or the University
7 of Kansas through the use of interstate wires? The answer is
8 no. Not one single shred of evidence.

9 So let's talk about another school that the government
10 has alleged is a victim in this case. The University of Miami.
11 You heard the stipulation read into the record by the
12 government. And that stipulation simply means that the
13 government and we agree that what is contained in that
14 stipulation is to be considered by you all as evidence.

15 So let's take a look at the most relevant portion of
16 that stipulation, which is Government Exhibit S7.

17 "On or about August 6, 2017, after Brad Augustine
18 requested money from Adidas for the stated purpose of providing
19 those funds to the family of Nassir Little, Augustine told
20 Christian Dawkins, in substance, that he did not intend to
21 provide that money to the Little family but instead intended to
22 use the money for his AAU team and other expenses." Remember
23 that word "intended."

24 So, ladies and gentlemen, that's a fancy way of saying
25 Brad Augustine was trying to con Adidas out of money. And,

1 therefore, there was never any conspiracy associated with an
2 attempt to steer or influence Nassir Little to the University
3 of Miami. It was a sham. Brad Augustine was lying. No
4 parents ever received any money. No kids were paid to attend
5 the University of Miami. No kids or parents ever made any
6 certifications of eligibility to the University of Miami.
7 Therefore, the University of Miami never suffered any harm or
8 injury. Absolutely nothing.

9 So I submit to you, ladies and gentlemen, based on
10 that evidence of what you know, what we have just talked about,
11 as we have taken this journey so far, no North Carolina State,
12 no Kansas, and no University of Miami.

13 Now, the government still alleges, despite that, that
14 Christian Dawkins was in a conspiracy with the two gentlemen
15 associated with Adidas, Mr. Gatto and Mr. Code.

16 Ladies and gentlemen, as you deliberate on whether
17 Christian Dawkins was involved in a conspiracy with the two
18 defendants associated with Adidas, ask yourselves how that's
19 possible, when the evidence has shown that Christian Dawkins
20 had nothing to do with three of the four Adidas schools even
21 referenced in Count One of the charges.

22 Not to mention, during the course of this trial you
23 were presented with evidence that Christian Dawkins was far
24 from exclusively working to help Adidas schools get players.
25 In fact, he was working just as much to help Nike schools as he

IAH8GAT4

Summation - Mr. Haney

1 ever did with Adidas.

2 Let's take a look at some testimony from Brian Bowen
3 Senior, the father of Brian Bowen Junior. We referred to him
4 as Tugs, and you all know by now who that is. We heard that my
5 client, Christian Dawkins, discussed several options with Brian
6 Bowen Senior. Here is the testimony, question to Brian Bowen
7 Senior by me:

8 "Q. And there was conversation about other schools with
9 yourself and Christian that were possible suitors for your son
10 at the college level, would you agree?

11 "A. Say that again. I'm sorry.

12 "Q. There were other schools that you discussed including
13 DePaul, correct?

14 "A. Yes.

15 "Q. Creighton, correct?

16 "A. Yes.

17 "Q. Oregon, correct?

18 "A. Yes.

19 "Q. UNLV, correct?

20 "A. Yes.

21 "Q. And Michigan State obviously, correct?

22 "A. Yes."

23 Now, ladies and gentlemen, you know from the evidence
24 two of these schools, Michigan State and Oregon, they are both
25 Nike schools.

1 So, ladies and gentlemen, the conspiracy that the
2 government alleges with the Adidas defendants in Count One and
3 my client, I submit to you, based on all that evidence, it's
4 not there. Forget about beyond a reasonable doubt. There is
5 no evidence of it. And notwithstanding the incredibly high
6 burden of proof in a criminal case, which is beyond a
7 reasonable doubt. It's the highest burden of proof we have in
8 the America legal justice system. In fact, it's a balancing
9 test. You literally put the evidence on a scale and you weigh
10 it. And it's not a little more than not; it's significantly
11 more than it's not. In this case, ladies and gentlemen, there
12 is nothing even to put on the scale, I submit to you.

13 So what does that leave us with? That leaves us with
14 one school, I contend, and one remaining count, and one very
15 opportunistic father.

16 Now, central to the government's case is that
17 Christian Dawkins, at the age of 23 years old, somehow
18 influenced the father of Tugs Bowen to get his son to attend
19 the Adidas-sponsored University of Louisville by paying Brian
20 Bowen Senior with money that Christian Dawkins obtained from
21 Adidas.

22 Now, I will not, and cannot, interject my own feelings
23 to that suggestion, but let's look at the evidence and focus on
24 how that simply did not happen.

25 First of all, when Brian Bowen Senior took that

IAH8GAT4

Summation - Mr. Haney

1 witness stand I asked him on cross-examination, whose decision
2 was it for Tugs Bowen to go to Louisville? And Brian Bowen
3 Senior's answer to my question was so important, so paramount
4 to this case I want you to see it for yourselves and read it.
5 I am not going to talk. I want you to look at it.

6 (Continued on next page)

Iahdgat5

Summation - Mr. Haney

1 MR. HANEY: There it is, ladies and gentlemen. You
2 heard it from the government's own witness, Tugs Bowen -- not
3 his father, not Christian Dawkins -- Tugs Bowen made the
4 decision to go to Louisville. I submit to you that this
5 statement, this testimony from Brian Bowen Senior is fatal to
6 the government's case. I don't know how much clearer evidence
7 you can have than that statement by Brian Bowen Senior.

8 And, ladies and gentlemen, remember, that came from
9 the government's own witness, who is testifying and being
10 granted immunity from prosecution of multiple felonies he was
11 charged with. Testifying in this case to potentially avoid
12 going to prison. Testifying to help the government convict my
13 client. And he told you that his son was the one who chose to
14 go to Louisville.

15 Now, you also heard Brian Bowen Senior testify that on
16 numerous occasions Christian Dawkins advocated and pushed for
17 his son to attend the hometown school of Michigan State
18 University. Here's that testimony now.

19 (Pause)

20 I asked Mr. Bowen, on cross-examination:

21 "Q Mr. Bowen, you testified on direct about conversations with
22 Christian Dawkins about where your son would go to school, is
23 that correct?

24 "A Yes, that's correct.

25 "Q One of those schools that was discussed was Michigan State

Iahdgat5

Summation - Mr. Haney

1 University, is that a correct statement?

2 "A Yes, it is."

3 You also saw in Government Exhibit 102K-10 text
4 messages between Christian Dawkins and Brian Bowen Senior that
5 Christian Dawkins told Brian Bowen Senior that his son should
6 go to Michigan State, a Nike school. And I want you to take a
7 look at that exhibit.

8 And right here on May 18, 2017, shortly before he made
9 his decision, you see my client, Christian Dawkins, sending a
10 text to Brian Bowen Senior, Christian telling Brian Bowen
11 Senior, on May 18, 2017, that Tugs should go to MSU, keep it
12 simple. They want Tugs.

13 Brian Senior says, "He's just not feeling them. I'll
14 ask him again today. I'm for MSU. It's him."

15 Understand, those are text messages. Those two
16 gentlemen don't know they're being monitored by the FBI. So
17 here we have, again, Christian Dawkins charged in a conspiracy
18 with Adidas, making a pitch, telling Brian Bowen Senior his son
19 should go to a school who is not sponsored by Adidas but
20 instead sponsored by Adidas' archrival Nike.

21 And Brian Bowen Senior says, as you can see from the
22 text message: I'll ask him today. Tugs is just not feeling
23 them. I'm for MSU. It's him.

24 Does that sound like to you, ladies and gentlemen,
25 that he is the decision maker? Does it sound like, as the

Iahdgat5

Summation - Mr. Haney

1 government contends, Brian Bowen Senior was forcing his son to
2 do anything? Does this sound like a text from a man who has
3 that kind of influence over his son?

4 And, ladies and gentlemen, when I asked Brian Bowen
5 Senior in this courtroom why his son did not go to the hometown
6 school of Michigan State University, what did Brian Bowen
7 Senior say? Look at what Brian Bowen Senior said. I asked him
8 on cross-examination:

9 "Q So it was your son's choice to go to Michigan State or not
10 to go to Michigan State, is that a fair statement?

11 "A Of course.

12 "Q Just like it was your son's choice to go or not to go to
13 Louisville, correct?

14 "A Of course."

15 How much clearer can that be? Beyond a reasonable
16 doubt? Tugs Bowen was the decision maker. Not Brian Bowen
17 Senior. Not Christian Dawkins.

18 Let's take a look at some text messages between
19 Christian Dawkins and Tugs himself. In Exhibit 105, Christian
20 Dawkins texts, on the date of May 23, 2017, shortly before -- a
21 couple of weeks before Tugs Bowen makes a decision. Christian
22 Dawkins texts: The last one you should talk to, though, is
23 Marvin Menzies at UNLV. He's got a squad and a good thing
24 going. And you can be the man. And you need to really have a
25 final conversation with Dana Altman at Oregon. It's a terrible

Iahdgat5

Summation - Mr. Haney

1 place but a good basketball situation.

2 Tugs responds: OK, I will.

3 Then Christian responds: OK, cool. Let me know if
4 you have any questions or want to know anything background wise
5 about the coaches or players before you make a final decision.
6 Whatever you do, you will kill it.

7 Does this sound like somebody who was trying to
8 influence Tugs Bowen to go to any school, Adidas or otherwise?
9 Ladies and gentlemen, I submit to you, based on the evidence,
10 not all the secret accounts and invoices and backbones, based
11 on the evidence it makes no sense.

12 But let's not stop there. Our journey for justice has
13 got a few more stops along the way.

14 Let's talk about motivation for a minute. The
15 government's theory depends on Brian Bowen Senior taking money
16 to influence his son to go to Louisville. But you heard Brian
17 Bowen Senior, the government's witness, called before you by
18 the government to help their burden. Their witness told you
19 himself, the most important factor in making any basketball
20 decision with his son, since his son was in high school, was
21 not money but whether the situation was a good basketball fit.
22 You heard that Tugs Bowen, from his dad's testimony, was
23 offered \$18,000 -- or the father was offered \$18,000 for his
24 son to play AAU basketball for the Spiece Indy Heat. Let's
25 take a look at that testimony now.

Iahdgat5

Summation - Mr. Haney

1 My question to Brian Bowen Senior:

2 "Q And when your son was still in high school, you were
3 actually even offered \$18,000 to play for a team out of
4 Indiana, called the Spiece Indy Heat, correct?"

5 So what happened after Brian Bowen Senior was offered
6 \$18,000 by the Spiece Indy Heat, to play for that AAU team? He
7 told you what happened. My question to Brian Bowen Senior:

8 "Q Tugs chose not to play for that team, didn't he?

9 "A Correct."

10 And Tugs Bowen, as you heard from the testimony, he
11 didn't play for the Spiece Indy Heat. He instead went and
12 played for another team, called the Mean Streets. And why Mean
13 Streets? Were they paying more money? No. Brian Bowen Senior
14 told you, the Mean Streets were only going to give him \$5,000,
15 which he took. And when I pressed Brian Senior on that point,
16 look at what he said:

17 "Q So even though you could have been paid three times more
18 money to play for the Spiece Indy Heat, you didn't because you
19 felt the Mean Streets were a better basketball fit for your
20 son, correct?

21 "A Correct."

22 In fact, Brian Bowen Senior accepted less than one
23 third of the amount of money he could have received from the
24 other AAU team, the Spiece Indy Heat. He got only \$5,000
25 instead of \$18,000 for Tugs Bowen to play for the Mean Streets.

Iahdgat5

Summation - Mr. Haney

1 Because it was a better basketball fit for his son.

2 And that wasn't the only example. The evidence showed
3 that Tugs' father was also made aware of an offer of \$150,000
4 and an \$80,000 car from an assistant coach at Oklahoma State
5 University for his son to play there. Let's look at the
6 transcript. The question to Brian Bowen Senior:

7 "Q What did Mr. Dawkins say with respect to Oklahoma State
8 University?

9 "A They were like \$150,000 cash, \$80,000 for a car, and some
10 undisclosed amount to buy a house, I guess, too."

11 Brian Bowen Senior also testified that his son was
12 going to the University of Arizona but only changed his mind
13 when two kids, who had previously declared for the NBA draft,
14 changed their minds and returned to school. You heard his
15 testimony. Rawle Alkins and Allonzo Trier. When that
16 happened, the University of Arizona was ruled out. Why? It
17 wasn't a good basketball fit.

18 Brian Bowen Junior -- I'm sorry, Brian Bowen Senior
19 then testified not until the end of May of 2017 did the
20 University of Louisville even become a consideration for his
21 son's college choice. Not because of money, but because
22 Christian Dawkins and Bowen Senior realized that a player named
23 Donovan Mitchell had left Louisville and went to the pros. How
24 do we know that? You can see it from his testimony.

25 He was asked:

Iahdgat5

Summation - Mr. Haney

1 "Q Mr. Bowen, when Donovan Mitchell declared for the NBA
2 draft, did you feel at that point the University of Louisville
3 became a good basketball fit for your son?

4 "A I mean, not immediately. Once, you know, Christian had
5 mentioned it to me. I didn't really think about Louisville."

6 "Best basketball fit." We see it over and over, a
7 pattern. That is why Tugs Bowen played for the Mean Streets.
8 That is why he played for his high school team, La Lumiere Prep
9 School. Just like why he did not choose Michigan State. Just
10 like he did not choose Arizona. Each time, it was always Tugs
11 Bowen's decision. And each time Tugs Bowen's decision was
12 based on basketball, not money.

13 And, ladies and gentlemen, the same thing happened in
14 this case, the same pattern continued. Let's look at why Brian
15 Bowen Senior said Tugs Bowen chose Louisville. The question
16 was posed:

17 "Q And when Tugs made that decision to go to Louisville, you
18 felt that it was a good decision in picking the University of
19 Louisville, didn't you?

20 "A I agreed with it.

21 "Q There was no doubt that you believed the University of
22 Louisville had a great basketball program for your son,
23 correct?

24 "A Yes.

25 "Q And you thought that your son was a great fit for the

Iahdgat5

Summation - Mr. Haney

1 University of Louisville basketball team, too, didn't you?

2 "A Yes."

3 And given that pattern here, there is no wonder why
4 Tugs Bowen ended up at the University of Louisville.

5 And just like the evidence has shown, Louisville is
6 not the only school offering money for Tugs Bowen to attend
7 their school and play on their basketball team. Brian Bowen
8 Senior, like he always had, he was going to get paid no matter
9 where his son ended up playing.

10 Ladies and gentlemen, I submit the government has not
11 come close to meeting the burden of proof in this case. And I
12 submit to you, they have not presented any evidence at all that
13 my client ever influenced the dad, Brian Bowen Senior, to do
14 anything. The government had my client's phones wiretapped,
15 obtained all of his emails, text messages. And despite the
16 mountain of data they collected over the years of this
17 investigation, the government has not shown you in their case
18 one single phone call, one single text message, one single
19 email where my client ever told Tugs Bowen or his dad that if
20 Tugs Bowen went to the University of Louisville, then, and only
21 then, would he pay his dad a hundred thousand dollars or anyone
22 else would. The evidence is silent on that because there isn't
23 any.

24 Beyond a reasonable doubt? Again, use your common
25 sense and logic. If that ever was agreed upon by Christian

Iahdgat5

Summation - Mr. Haney

1 Dawkins and Brian Bowen Senior, why wouldn't there be any
2 evidence of it? Nothing.

3 Now, ladies and gentlemen, I submit that based on the
4 evidence and the testimony of Brian Bowen Senior, you can
5 infer, you can make a reasonable inference, and conclude that
6 Brian Bowen Senior was an opportunist. You heard from the
7 testimony, he was a 46-year-old police officer, on disability,
8 who for six years had been committing food stamp fraud,
9 cheating poor people, not paying his taxes, and mooching off my
10 client, barely in his 20s. You saw Brian Bowen Senior testify.
11 You are the determiners of credibility right now, not me. My
12 opinion of him doesn't matter.

13 But ask yourselves -- you watched him testify -- does
14 Brian Bowen Senior strike you as a grown man who would ever let
15 a 20-something-year old kid like Christian Dawkins tell him
16 what to do with his son? I submit to you, ladies and
17 gentlemen, and I contend the notion that Christian Dawkins, at
18 23 years old, could have ever influenced Brian Bowen Senior to
19 force his son, his pride and joy -- you heard him testimony,
20 working with him since he was little -- to suggest that he
21 could have gotten him to do anything he didn't want to do is
22 utterly ridiculous.

23 I submit, our trip could end right now, that the
24 journey is over, and you've arrived at your place that we
25 embarked upon during the opening statement of justice. Let's

Iahdgat5

Summation - Mr. Haney

1 go down the road a little bit further just in case we are not
2 all there.

3 You've heard over the course of the last two weeks
4 repeated testimony from government witnesses, multiple, who
5 have said paying money to parents of prospective
6 student-athletes is a violation of the NCAA rules and
7 compromises the eligibility of those student-athletes, in this
8 instance, Brian Bowen Junior, or Tugs Bowen.

9 OK. Let's say for the sake of argument that's right.
10 Let's take a look at all the times Brian Bowen Senior broke the
11 NCAA rules long before July of 2017: \$8,000 wrapped in a
12 magazine sent to him from TJ Gassnola. \$12,000 over time from
13 Chris Rivers, who paid the rest of the \$20,000 payment to play
14 for the Michigan Mustangs. \$5,000 from the former NFL wide
15 receiver, Tai Streets. \$1,500 from Tim Anderson, the head
16 coach of the Nike Mean Streets. A \$2,000 check from Adidas'
17 Chris Rivers. \$8,000 from Shane Heirman, the head basketball
18 coach at the La Lumiere Prep School. By his own admission,
19 Brian Bowen Senior testified on at least seven occasions,
20 before he ever took that money in July of 2017 in the parking
21 lot of Morristown, New Jersey in that sandwich, he broke the
22 NCAA rules by taking money, not just from Adidas, but from the
23 coaches and from Nike-sponsored programs.

24 The government just stood up here during their closing
25 argument and told you that the July 2017 payment from Munish

Iahdgat5

Summation - Mr. Haney

1 Sood to Brian Bowen Senior was the payment, the trigger that
2 made Brian Bowen Junior ineligible and caused the false
3 certification to be made to the Athletic Department and thereby
4 defrauding the University of Louisville. Are you kidding me?

5 Ladies and gentlemen, think about that logic, if you
6 will. If paying parents makes kids ineligible, which is what
7 they say, then I contend any one of those seven separate
8 occasions when Brian Bowen Senior broke the NCAA rules by
9 getting paid, long before he got paid in 2017, made his son
10 ineligible back then. Arguably, Brian Bowen Junior was
11 ineligible seven times before he ever got to Louisville.

12 Beyond a reasonable doubt?

13 By his own admission, Brian Bowen Senior testified
14 that after the infamous July 2017 payment from Munish Sood on
15 the date of August 23rd, he received \$1,300 in cash. And who
16 did Brian Bowen Senior receive that cash from? Let's look at
17 what Brian Bowen Senior said. The government's own witness.
18 He told you, the question:

19 "Q You testified on direct, Mr. Bowen, that there was an
20 occasion where the head associate basketball coach at the
21 University of Louisville, Kenny Johnson, gave you \$1,300 cash
22 outside the Galt house apartment in Louisville, is that right?"

23 He answered, "Yes."

24 "Q And you know that the head associate coach is the
25 number-two guy on the coaching staff behind the head coach,

Iahdgat5

Summation - Mr. Haney

1 isn't that right?

2 "A Yes.

3 "Q And that payment by you -- the head associate coach of the
4 University of Louisville, Kenny Johnson, that would be a
5 violation of the NCAA rules, wouldn't it?"

6 He answered, "Yes."

7 That's right, ladies and gentlemen. Brian Bowen
8 Senior acknowledged, on cross-examination, that the University
9 of Louisville's head associate basketball coach, Kenny Johnson,
10 the second in command behind Rick Pitino, who was in the
11 Louisville basketball program, paid him \$1,300. And Brian
12 Bowen Senior knew when he took that money, just like he did
13 with all the other money he took, he was violating the NCAA
14 rules. Brian Bowen Senior told you he knew that payment could
15 have compromised his son's eligibility in the exact same way it
16 could have when he received the money from Munish Sood in that
17 Morristown, New Jersey parking lot.

18 Here is the testimony on that. A question to Brian
19 Bowen Senior was posed:

20 "Q So this action by the head associate coach at the
21 University of Louisville, Kenny Johnson, paying you cash could
22 have affected Tugs' eligibility in the exact same way Christian
23 Dawkins did, agreed?

24 "A Both violations."

25 And the government wants you to believe that the

Iahdgat5

Summation - Mr. Haney

1 University of Louisville is a crime victim? A fraud victim?
2 Victimized by the actions of my client. When their own second
3 in command of the basketball program was breaking the exact
4 same NCAA rules they allege was the harm that they suffered in
5 this case?

6 And to further exemplify the absurdity of the
7 situation in Louisville, you were presented with other
8 evidence, directly from the government, through a stipulation
9 that I'm about to show you again. I am not going to read the
10 whole thing.

11 At the time the University of Louisville Head
12 Associate Basketball coach, Kenny Johnson, broke the NCAA rules
13 by paying Brian Bowen Senior that \$1,300 cash, the Louisville
14 basketball program had just recently been placed on probation
15 for committing major rules violations. Now, I want you to keep
16 in mind, these violations didn't have anything to do with these
17 defendants. These violations were violations that occurred
18 between 2010 and 2014. And I contend that this is an example
19 of Louisville, the OK for their basketball program violating
20 the rules of the NCAA to rack up wins.

21 Let's look at the stipulation. The highlighted
22 portion, if you could turn your attention to that.

23 On the date of June 15, 2017, the NCAA Division I
24 Committee on Infraction ("COI") found that on twelve occasions,
25 between approximately 2010 until approximately 2014, the former

Iahdgat5

Summation - Mr. Haney

1 Director of Basketball Operations for the University of
2 Louisville's men's basketball team committed NCAA recruiting
3 violations. The COI further determined that, through this
4 conduct, the University of Louisville had committed Level I
5 aggravated violations, i.e., ones which seriously undermined or
6 threatened the integrity of the NCAA collegiate model --
7 because the violations provided, or were intended to provide, a
8 substantial or recruiting advantage."

9 Just like that Miami stipulation that we saw before,
10 this is evidence; this is agreed to by the defense and the
11 government.

12 And I contend that the University of Louisville
13 baseball program had such little regard for the NCAA and their
14 rules, they thumbed their nose at the NCAA and within 90 days
15 of not just being placed on probation for four years, but also
16 being stripped of their 2013 national title, continued to
17 commit NCAA rules violations by making cash payments to
18 players. I ask you, ladies and gentlemen, does that sound like
19 a crime victim to you?

20 As I told you in the opening statement, this case was
21 never a "who done it," for this case is simply what was in the
22 mind of the young man sitting over there. And the Judge will
23 instruct you -- not me -- on the law of intent. Always require
24 the government to prove their case beyond a reasonable doubt.

25 Now, you heard testimony from Munish Sood, who stated

Iahdgat5

Summation - Mr. Haney

1 the obvious. Munish Sood was the banker that testified at the
2 beginning of the trial. One of the first witnesses, I
3 remember. He testified that to be involved in the sports
4 business, he and Christian needed the universities. Without
5 them, they wouldn't have any clients. The schools were the
6 lifeblood of the sports agencies. Kids went to these schools
7 arguably not to get an education but they went to these schools
8 to increase their draft status, so they could become
9 professionals, and become future clients perhaps of Munish Sood
10 and Christian Dawkins. Therefore, you may ask yourselves, as
11 you deliberate -- and think of the logic of this and make
12 reasonable inferences -- what possible sense would it have made
13 in Christian Dawkins' mind that he would ever want to do
14 anything with the specific intent to defraud any of these
15 universities? Christian Dawkins wasn't interested in hurting
16 universities. It was in his best interest to help them. And
17 the best way Christian Dawkins could help universities is help
18 them get players.

19 And the evidence backs this up completely -- not even
20 our evidence, the government's evidence. Let's look back at
21 Government Exhibit 107Q-1, which is a text message between TJ
22 Gassnola and the head coach of Louisville, Rick Pitino himself.
23 Remember this text message. TJ Gassnola is congratulating Rick
24 Pitino for the commitment of Brian Bowen Junior to play
25 basketball at Louisville. Texting Rick Pitino how Tugs Bowen

Iahdgat5

Summation - Mr. Haney

1 will help Louisville's basketball program. Why? Because Tugs
2 Bowen going to Louisville was a good thing for Louisville. Not
3 a bad thing. Not a fraudulent thing. And Rick Pitino knew it.

4 Rick Pitino: Thumb's up. Good job. Thanks.

5 Everything Christian Dawkins did with respect to Tugs
6 Bowen and Louisville was done with the best intentions in his
7 mind. Not done for any purpose other than that. The evidence
8 showed he helped Brian Bowen Senior get the money he
9 desperately needed in part to repair his house that had burned.
10 He helped Tugs Bowen find a top school that needed a player to
11 replace Donovan Mitchell, and offered a great stage to audition
12 for the NBA. He helped the Louisville basketball team secure
13 one of the best high school basketball players in America. And
14 in doing all these things, he scored points with the dad, he
15 got in good favor with Rick Pitino, and one day hopefully, if
16 he was lucky, got a step closer to being Tugs Bowen's manager
17 or agent. Where possibly, ladies and gentlemen, based on any
18 of those facts can you find one scintilla that Christian
19 Dawkins acted with an intent to harm, defraud, or hurt anyone?

20 The government has tried to show you that because
21 money exchanged hands in cash form, because it was submitted
22 under a different name, travel expenses on invoices. Don't
23 forget, a lot of that has nothing to do with my client.
24 Understand, he's being tried here alone. And sometimes in a
25 case like this, all of the evidence is cumulated and it can be

Iahdgat5

Summation - Mr. Haney

1 prejudicial to a particular client. So keep Christian Dawkins,
2 if you will, separate to some of those transactions.

3 But you heard from Christian Dawkins himself why these
4 payments were happening in cash form and why they were being
5 concealed, the ones he was associated with. Listen to the
6 phone call. It is frankly rare that as a defense attorney you
7 get such a clear refutation of a government theory against your
8 client by and through a wiretap. So I'm going to play right
9 now briefly phone call DX7 for you. You could hear Christian
10 Dawkins describing in his state of mind his own words in the
11 transcript that the accompanies.

12 (Audio played)

13 Did you hear that, ladies and gentlemen? The federal
14 agent asked Christian Dawkins is there any reason why this guy
15 didn't want to just wire it to him. It sounds like a question
16 an FBI agent would ask. Christian Dawkins' answer was, "I
17 guess from the standpoint of keeping everything as clean as
18 possible for -- you never know when the NCAA is going to come."
19 He didn't say, Well, we're committing wire fraud. What if the
20 FBI finds out?

21 Christian Dawkins' paranoia was based on what he said
22 in this wiretap. He's worried about the NCAA.

23 As we said in our opening statements, the NCAA rules
24 were violated.

25 You also heard the government reference in their

Iahdgat5

Summation - Mr. Haney

1 closing argument a Jeff and Jill. You remember, Jeff DeAngelo
2 and Jill were these undercover investors that Munish Sood had
3 brought to Christian Dawkins and Merl Code. And the government
4 suggested that the concern of Christian Dawkins and Merl Code
5 was that Jeff and Jill needed to be investigated. Right? Who
6 knows who these people are. And here's testimony from Munish
7 Sood that could help clarify that to you, to why Christian
8 Dawkins was concerned, so there's not some misleading
9 information to cause you to think otherwise. The question to
10 Munish Sood:

11 "Q Isn't it true that you and Christian both had concern about
12 Jeff and Jill, the investors, because of the association they
13 had with Marty Blazer, right?

14 "A Yes.

15 "Q Because Marty Blazer introduced you to Jeff and Jill,
16 didn't he?"

17 He answered, "Yes."

18 "So you and Christian Dawkins had conversation about
19 the concern of the investigation of Marty Blazer with his
20 problems with the SEC, right?"

21 Mr. Sood answered: "We had concerns about that and
22 also the fact that, as I said earlier, where the money was
23 coming from.

24 "Q And that concern included being introduced to Jill because
25 she was associated and linked with this Marty Blazer guy,

Iahdga5

Summation - Mr. Haney

1 right?

2 "A Correct."

3 So any concerns that they had with Jeff and Jill were
4 because of this shady character named Marty Blazer who brought
5 them to the table. So, I want you to understand that, and
6 that's what the evidence is.

7 Why did Christian Dawkins do the things that he did?
8 He definitely did things. We sat here for three weeks and
9 heard that. And because none of us are mind readers, we need
10 to look at the evidence to do our best in answering that
11 question.

12 And when the doors close behind you, and they will
13 soon, and you begin to deliberate in the jury room, I want you
14 to keep one simple phrase in mind and one simple concept. I
15 believe it is a phrase that my client will never forget, and I
16 hope you won't, either. "Preexisting relationship." "Prior
17 relationship." Though many things in this case are in dispute,
18 one thing I submit to you that is absolutely certain is the
19 fact that in the mind of Christian Dawkins, he believed,
20 whether he was right or wrong, that arranging to give Brian
21 Bowen Senior money was not an NCAA rules violation. And,
22 again, whether he is right or wrong about that, what matters is
23 if he had a good faith belief for that.

24 How can we possibly know what was in Christian
25 Dawkins' mind at the time the payments were happening? You

Iahdgat5

Summation - Mr. Haney

1 could almost say it is not possible. I submit we have
2 evidence. And, fortunately, if there is any good thing to
3 happen when the FBI is monitoring your phone calls, fortunately
4 they were on this occasion when they wiretapped his phone.
5 Let's listen to a recording they took of Christian Dawkins, and
6 there is a transcript that accompanies.

7 (Audio played)

8 So, we'll leave that up for a minute. In his truist
9 moments -- how truer a moment can you have than when you're
10 being wiretapped by the FBI -- Christian Dawkins says: Yeah,
11 that's my son, Jeff. Like, when I tell you to feed my guy,
12 like this is my guy, like his effing aunt used to babysit me,
13 I've been knowing this kid his whole life. His cousin was my
14 first girlfriend. Like, these are my people people.

15 He then goes on and says: I don't even think they
16 could do anything, because I've been knowing him his whole
17 life. I don't even think it is an added benefit. I think it
18 would be like, OK, you know, they just -- they just had a prior
19 relationship before. That's how long I've been knowing him.

20 That was what was in his mind. That's the evidence.

21 Now, let's put that in context. You may say, So what?
22 Who says that that's OK? Well, you heard the testimony of John
23 Carns, the senior associate athletic director for compliance at
24 the University of Louisville, who testified very clearly, and
25 recognized the existence of such a rule, that under certain

Iahdgat5

Summation - Mr. Haney

1 circumstances those preexisting relationships are exempt from
2 NCAA the impermissible benefit rule and can even be paid cash.
3 Let's look at the Louisville compliance director's testimony
4 together. The question was posed to Mr. Carns, from
5 Louisville:

6 "Q You know there is a exception to the preferential treatment
7 rule that involves preexisting relationships, don't you?

8 "A Yes, there is."

9 But it gets better. Here's the same compliance
10 director testifying that cash could even be paid under the
11 preexisting relationship rule. Question to Mr. Carns:

12 "Q As the director of compliance, would you agree that there
13 does exist a circumstance called a preferential -- under the
14 preferential treatment rule, where if there is a preexisting
15 relationship between parties, cash can be paid under certain
16 circumstances?

17 "A Under the circumstances listed in that interpretation,
18 yes."

19 So from the government's own witness, there is a
20 preexisting evidence -- existing relationship rule, where cash
21 can be paid to those who had a prior relationship, and there
22 was clearly evidence that Christian Dawkins had a preexisting
23 relationship with Tugs Bowen and his family, absolutely -- not
24 my opinion, from the evidence. But let's look at the evidence
25 and not take Christian Dawkins' word for it.

Iahdgat5

Summation - Mr. Haney

1 Here is Government Exhibit 516. It is an email from
2 Christian Dawkins to Munish Sood. Christian Dawkins emails
3 Munish Sood, April 10, 2016.

4 Brian Bowen: He's a kid that is a little bit more of
5 a longterm project. \$1,500 a month is what he will need. He
6 is a Saginaw, Michigan kid. I've known the family for years.
7 He's for sure a pro.

8 But it's not just Christian Dawkins who acknowledges
9 this, Munish Sood also acknowledged that Christian referred to
10 Tugs Bowen as his son. Here's Munish Sood's testimony on that.
11 Mr. Sood was asked:

12 "Q And you had on several occasions had heard Chris Dawkins,
13 my client, refer to Tugs Bowen as his son?"

14 He answered, "Yes."

15 Brian Bowen Senior acknowledged that he and Christian
16 Dawkins went way back. Brian Bowen Senior's testimony:

17 "Q And you and Christian Dawkins go way back; is that a fair
18 statement, is that fair to say?

19 "A Yeah. I knew him from the same city."

20 How far back is way back? Brian Bowen Senior told you
21 that Christian Dawkins was in fact Tugs Bowen's AAU coach since
22 Tugs Bowen was 12 years old. Question to Bowen Senior:

23 "In fact when Tugs was only 12 years old, Christian
24 was an AAU basketball coach, wasn't he?

25 "A He was one of them.

Iahdgat5

Summation - Mr. Haney

1 "Q On the Dorians Pride AAU team, correct?

2 "A Yes."

3 So, based on the evidence, is there really any
4 question at all that Christian Dawkins and the Bowen family,
5 including both Brian Senior and Tugs, had a preexisting
6 relationship? In fact, I have already played you the recording
7 where Christian Dawkins tells the undercover FBI agent that
8 Brian Bowen Senior's aunt used to babysit him. Now, I played
9 that call. We are not going to listen it to it again. But I
10 want you to look at the transcript of that call, if you will,
11 because this is a very important point.

12 Here's a transcript of that phone call. This is DX5T,
13 as evidence. I want you to look closely at the date on the
14 phone call. The date on the phone call, July 10th, 2017, three
15 days before the payment to Munish Sood in the Morristown, New
16 Jersey park lot.

17 "I don't even think they could do anything because
18 I've been knowing him his whole life. I don't even think it's
19 an added benefit. I think it would be like, OK, you know, they
20 just had a prior relationship before."

21 What better proof explains what was in Christian
22 Dawkins' mind than those words?

23 Understand, ladies and gentlemen, we don't have a
24 burden of proof. Mr. Dawkins and I could sit down and not say
25 a word. But I'm giving you evidence of way more than what a

Iahdgat5

Summation - Mr. Haney

1 reasonable doubt is.

2 Ladies and gentlemen, what we saw from the government
3 in this case is what we expected. Exceedingly predictable and,
4 I submit, underwhelming. The government inundated you with
5 weeks of phone calls, transcripts, emails and text messages
6 showing that in certain circumstances, mostly with others, NCAA
7 rules were violated. They played grainy videos of hotel
8 meetings, wiretaps of guys using bad language, talking about
9 breaking rules, cooperating witnesses testifying against
10 friends, just like we told you they would. Lined up the
11 witnesses one by one, spending weeks to emphasize just how much
12 these rules were broken. Witnesses who admitted testifying
13 against my client could possibly provide them relief from
14 lengthy prison terms.

15 They brought in a guy named TJ Gassnola. You sawed TJ
16 Gassnola. Let me ask you a question. Would you buy a used car
17 from TJ Gassnola? A better question: Would you buy a new car
18 from TJ Gassnola with a hundred-thousand-mile warranty? I
19 would submit, you probably wouldn't. In fact, TJ Gassnola, if
20 you recall, he said that he had a lot to gain by testifying
21 against Christian Dawkins. It was my last question I asked TJ
22 Gassnola. And he struggled with me, but eventually he admitted
23 it, that he had a lot to gain by being here to testify against
24 Christian Dawkins.

25 And so as you deliberate, I implore you to ask

Iahdgat5

Summation - Mr. Haney

1 yourself if the government has proved beyond a reasonable doubt
2 that Christian Dawkins committed the wire fraud, as it will be
3 instructed to you by the Judge, as it relates to the only
4 school, I submit to you, that is at issue in this case, the
5 University of Louisville. And if he had a good faith belief.
6 You will get instructions on that. The school's basketball
7 program was already on probation for breaking the rules and
8 continued to cheat the rules with no regard, and they are the
9 crime victims here?

10 Ask yourselves as you deliberate, what possibly did
11 Christian Dawkins do with any criminal intent? What did he
12 have to gain from causing harm to Louisville? Ask yourselves,
13 what proof did the government present that Louisville suffered
14 any harm? The evidence showed that Tugs Bowen never even
15 played at Louisville. He left.

16 I submit that as you deliberate, ask yourselves, based
17 on that phone call between Christian Dawkins and the undercover
18 FBI Agent known as Jeff DeAngelo, how could anyone conclude
19 anything other than in Christian Dawkins' mind what he was
20 doing was OK, in his 23-year-old mind as well.

21 Now, you'll be instructed by the Judge on the law.
22 You will be instructed on the definition of "reasonable doubt."
23 And as it's been emphasized, reasonable doubt is the highest
24 burden of proof that exists in the American legal justice
25 system, and there is a reason for that, because of the

Iahdgat5

Summation - Mr. Haney

1 consequences that can come with a conviction.

2 Ladies and gentlemen, even if you believe that --

3 MR. SOLOWIEJCZYK: Objection.

4 MR. HANEY: -- somehow the government --

5 THE COURT: The objection is sustained.

6 MR. HANEY: Thank you, your Honor.

7 THE COURT: The question of punishment in the event of
8 a conviction is not an appropriate consideration by the jury,
9 and you will disregard counsel's last remark.

10 MR. HANEY: Thank you, your Honor.

11 Ladies and gentlemen, even if you believe somehow the
12 government has proved there exists a high probability of guilt
13 that Christian Dawkins somehow intended to harm the
14 universities, that is not enough. Even if you say to
15 yourselves as you deliberate and sit around together as a
16 group, "Eh, you know, I think he did it. I think that guy's
17 guilty," in fact, that would not be enough. That, in fact,
18 would be the definition of not being guilty, because that very
19 uncertainty that you articulate, that thought in your mind is
20 what reasonable doubt is.

21 Simply put, ladies and gentlemen, you must be moved by
22 the case they put on against my client, moved beyond --

23 MR. SOLOWIEJCZYK: Objection.

24 THE COURT: Sustained.

25 Members of the jury, I will instruct you about

Iahdgat5

1 reasonable doubt. Counsel will not. And he will stop right
2 now.

3 MR. HANEY: Thank you, your Honor.

4 Ladies and gentlemen, as I leave you now, I will ask
5 you to remember what I said at the important -- on a very
6 important quote I gave you at the beginning of my opening
7 statement, the words of perhaps one of the greatest lawyers in
8 the history of this country, Clarence Darrow: "Justice has
9 nothing to do with what goes on in the courtroom. Justice has
10 everything to do with what comes out of a courtroom."

11 I respectfully ask you, on behalf of my client,
12 Christian Dawkins, to tell the government that that journey for
13 justice we took is now complete and you've arrived at that
14 destination, you have arrived at justice, and that Christian
15 Dawkins is not guilty.

16 Thank you.

17 THE COURT: Thank you, Mr. Haney.

18 Members of the jury, we are done for today. We will
19 resume at 9:30 tomorrow morning. We will hear from Mr. Moore,
20 we will hear from Mr. Schachter, and the government will have a
21 rebuttal and I will then charge you. I would appreciate it if
22 you could plan on staying past 5 tomorrow. I won't hold you
23 late but past 5.

24 OK. Thanks, folks.

25 THE CLERK: Will the jurors please come this way.

Iahdgat5

1 (Jury not present)

2 THE COURT: OK. Be seated, folks.

3 Do we have any other business this afternoon? No?

4 MR. HANEY: No, your Honor.

5 THE COURT: Have a good evening, everybody.

6 THE CLERK: All rise.

7 (Adjourned to 9:30 a.m., October 18, 2018)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25